SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 274

F. O. ROBERTSON, APPELLANT,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

APPEAL FROM THE SUPERIOR COURT OF VENTURA COUNTY, STATE OF CALIFORNIA

INDEX

	Original	Print
Record from Superior Court of Ventura County	"A"	1
Caption (omitted in printing)	"A"	
Record from Justice's Court of Ventura Township	1	1
Complaint	1	1
Notice of appeal to Superior Court	4	2
Statement on appeal	6	3
Reporter's transcript of proceedings	10	5
Caption and appearances	10	5
Testimony of A. J. O'Lein	12	6
Vendla S. O'Lein	25	16
A. J. O'Lein (recalled)	30	19
Kenneth F. Boraker	33	21
Judgment of the Court	36	23
Reporter's certificate (omitted in printing)	37	
Justice's certificate	38	24
People's exhibits:		
No. 1—Business reply card signed by Alvin J. O'Lein	39	25
No. 2—Cancelled check payable to Fred Robertson	40	26
No. 3—Receipt signed by Fred Robertson	41	27
No. 4—Receipt signed by Fred Robertson	42	28

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 26, 1945.

—948

		Original	Print
Record from Superior Court of Ventura County—Continued			
Record from Justice's Court of Ventura Township—Continued			
Reporter's transcript of proceedings—Continued			
People's exhibits—Continued			
No. 5—Application for membership—Alvin J. O'Lein		43	29
Certificate of membership		44	30
No. 6—Application for membership—Vendla S. O'Lein		46	32
Certificate of membership		47	33
Warrant of arrest		50	35
Money order message		52	35
Order for release of prisoner		53	36
Waiver of jury trial		54	36
Transcript of docket		55	37
Judgment		58	38
Trust fund deposit	(omitted in printing)	61	
Minute entry of hearing		62	39
Minute entry of judgment		64	40
Memorandum of opinion, Drapeau, J.		66	41
Judgment		70	44
Petition for appeal		71	45
Assignments of error		74	46
Order allowing appeal		102	48
Citation and service	(omitted in printing)	104	
Praecipe for transcript of record		108	49
Reporter's certificate	(omitted in printing)	111	
Judge's certificate	(omitted in printing)	112	
Clerk's certificate	(omitted in printing)	113	
Order extending time for docketing cause		114	51
Statement of points to be relied upon		115	51
Designation of record		119	52
Order noting probable jurisdiction		123	54

[fol. 1]

IN THE JUSTICE'S COURT OF VENTURA TOWNSHIP, COUNTY OF VENTURA, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

F. O. ROBERTSON, Defendant

COMPLAINT—Filed September 1, 1944

Count I

Personally appeared before me at the place and date hereinafter stated A. J. O'Lein, who, first being duly sworn, complains and says:

That F. O. Robertson ha- committed the crime of Violation of Section 703(a) of the Insurance Code in the manner and form as follows:

The said F. O. Robertson on or about the 28th day of August, 1944, within the Ventura Township, County of Ventura, State of California, and before the filing of this Complaint, did then and there wilfully and unlawfully act as an agent for a non-admitted insurer, to-wit: the First National Benefit Society, in the transaction of insurance business in this State, to-wit: the solicitation and sale of a policy of insurance to the said A. J. O'Lein, complainant herein; contrary to the form, force and effect of the Statute [fol. 2] in such case made and provided and against the peace and dignity of the people of the State of California.

Count II

For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charge set forth in Count I hereof, and connected in its commission, the said complainant further complains and says:

That F. O. Robertson committed the crime of violation of Section 1642 of the Insurance Code in the manner and form as follows:

The said F. O. Robertson on or about the 28th day of August, 1944, within the Ventura Township, County of Ventura, State of California, and before the filing of this Complaint, did then and there, wilfully and unlawfully solicit and sell to A. J. O'Lein a policy of insurance in the First National Benefit Society, the said defendant not then and there being licensed by the Insurance Commissioner of the State of California to act as an insurance agent, broker or solicitor, contrary to the form, force and effect of the Statute in such case made and provided and against the peace and dignity of the people of the State of California.

Said complainant therefore prays that a warrant be issued for the arrest of said F. O. Robertson, and that [fol. 3] he may be dealt with according to law.

(Signed) A. J. O'Lein.

Subscribed and sworn to before me, at my Office in said Township this 1st day of September, 1944.

(Signed) Glenn D. Corey, Justice of the Peace of Said Township.

[File endorsement omitted.]

[fol. 4] [File endorsement omitted]

IN THE JUSTICE'S COURT OF VENTURA TOWNSHIP

[Title omitted]

NOTICE OF APPEAL—Filed September 29, 1944

To the Honorable Glen D. Corey, Justice of the Above Entitled Court and to Arthur M. Waite, District Attorney of Ventura County, California:

You and each of you will please take notice that the above named defendant in the above entitled action hereby appeals to the Superior Court of the State of California, in and for the County of Ventura, from that certain judgment of conviction, and the whole thereof, rendered in the above entitled Court on the 29th day of September, 1944.

[fol. 5] This appeal is taken on both questions of law and fact.

Dated this 29th day of September, 1944.

(Signed) Robert R. Weaver, Attorney for Defendant.

Received copy of the within Notice of Appeal this 29 day of Sept. 1944.

(Signed) Julien G. Hathaway, Dep. Dist. Atty., Attorney for the People.

[fol. 6] [File endorsement omitted]

IN THE JUSTICE'S COURT OF VENTURA TOWNSHIP

[Title omitted]

STATEMENT ON APPEAL—Filed September 29, 1944

To the Honorable Glen D. Corey, Justice of the Above Entitled Court and to Arthur M. Waite, Esq., District Attorney of Ventura County, State of California:

Whereas, the defendant, F. O. Robertson, having on the 29th day of September, 1944, duly taken an appeal from the judgment therein entered in the said above named Justice's Court of Ventura Township for the County of Ventura, State of California on the said 29th day of September, 1944,

You and each of you are hereby notified that said defendant, F. O. Robertson, in the above entitled cause now presents this, his statement of grounds of appeal and points [fol. 7] upon which he relies upon appeal from the above entitled court to the Superior Court of the State of California in and for the County of Ventura, as follows:

I

That the evidence taken and heard by the Court in said cause is insufficient to justify the judgment in that it discloses that all of the actions of the defendant consisted of a series of events constituting transactions in interstate commerce and, therefore, were not subject to prosecution under the laws of the State of California.

II

That the Judgment is contrary to law.

III

That the judgment is contrary to evidence.

IV

That the judgment is contrary to the law and the evidence.

V

That the court erred in its decisions of matters of questions of law arising during the course of the trial.

VI

That the complaint on which this action is predicated fails to state a public offense in that it appears on the face thereof that the acts of the defendant complained of were, if true, done by him in accordance with the provisions of the Fourteenth Amendment to the Constitution of the [fol. 8] United States and the laws of the United States pertaining to the transactions of interstate commerce.

VII

That the court was without jurisdiction to entertain this proceeding for the reason that it appears on the face of the complaint that the acts of the defendant complained of were those pertaining to transactions in interstate commerce.

VIII

That Sections 703(a) and 1642 of the Insurance Code of the State of California are unconstitutional and in violation of and contrary to the commerce clause of the constitution of the United States and the Fourteenth Amendment thereof.

Wherefore, Defendant prays that the court allow and settle the above as and for his statement on appeal.

(Signed) Robert R. Weaver, Attorney for Defendant.

The Court does now settle and allow the foregoing Statement on Appeal and hereby certifies that the same is a true

and correct statement of the issues had in the above entitled action.

Dated this — day of ——, 1944.

——— ———, Justice of the Peace of Ventura Township, Ventura County, Calif.

[fol. 9] Received copy of the within Statement on Appeal this 29 day of Sept., 1944.

(Signed) Julien G. Hathaway, Dep. Dist. Atty., Attorney for the People.

[fol. 10] [File endorsement omitted.]

IN THE JUSTICE'S COURT OF VENTURA TOWNSHIP, COUNTY OF VENTURA, STATE OF CALIFORNIA

Glenn D. Corey, Esq., Justice

No. 27739

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

F. O. ROBERTSON, Defendant

Charge: Violation of Section 703 (a) and Section 1642, Insurance Code

Reporter's Transcript of Proceedings—Filed October 19, 1944

Ventura, California, Tuesday, September 26, 1944, 2:00 o'clock p. m.

APPEARANCES:

For the People: Julien G. Hathaway, Esq., Deputy District Attorney.

For the Defendant: Robert R. Weaver, Esq.

[fol. 11] Ventura, California, Tuesday, September 26, 1944, 2 P. M.

The Court: The People of the State of California versus F. O. Robertson.

Mr. Hathaway: This was the time set for trial, if the court please, in that matter and I am ready to proceed.

The Court: Is the defendant ready?

Mr. Weaver: The defendant is ready.

The Court: Mr. Weaver, do you waive the reading of the complaint?

Mr. Weaver: We waive the reading of the complaint, your Honor.

Mr. Hathaway: I believe, if I am not mistaken, the reading of the complaint and the arraignment and plea have all been taken care of already in the due and regular form and time in this court and the matter is coming on at this time for trial.

The Court: For trial.

Mr. Hathaway: I believe Mr. Robertson or his attorney was delivered a copy of the complaint at the time of the arraignment.

The Court: That is correct.

Mr. Hathaway: Mr. O'Lein, will you come forward and be sworn, please?

[fol. 12] A. J. O'Lein, called as a witness on behalf of the People, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Hathaway:

Q. Your full name is A. J. O'Lein?

A. Yes, sir.

Q. And where do you live, Mr. O'Lein?

A. I did live at 1561 Santa Ynez. We are just moving.

Q. You just moved in the last few days?

A. Yes, sir.

Q. But your residence on or about the 28th day of August, 1944, was the address you have just given?

A. Yes, sir.

Q. On Santa Ynez, was it?

A. Santa Ynez Street, yes, sir.

Q. Do you know the defendant, F. O. Robertson, who sits here in court?

A. I met him that day.

Q. By that day you mean the 28th day of August?

A. Yes, sir.

Q. Or on or about that date, of this year?

A. On or about that date, yes, sir.

Q. How did you meet him?

A. He called at my house.

Q. About what time of day was that?

A. I am not sure, but I believe it was about the middle of the afternoon.

Q. At the address you have given on Santa Ynez?

A. Yes, sir.

Q. That is Santa Ynez Street here in the City of Ventura?

[fol. 13] A. In the City of Ventura.

Q. Did he state what business he had with you or the purpose of his visit?

A. He said that he had gotten a card that I had put in the mail.

Q. Did he say whether he represented himself or some organization?

A. He said he represented this insurance company,—the First National——

Q. Do you remember the name?

A. The First National or National Insurance Company.

Q. The First National Insurance Company?

A. I am not sure whether it was First National or National. I think it was National.

Q. Perhaps we can identify it a little more fully in just a moment. Let me digress from that question just a moment. Had you ever received any literature, cards or other—perhaps erroneously using the term—advertisement for any insurance company, that you had answered?

A. Just one, yes.

Q. You had from that insurance Company?

A. Yes, sir, a card.

Q. And did you answer the card?

A. I did.

Q. And request information?

A. I just put my name and address on it, and one thing another, and sent it in. I think everything was on the card.

Q. I will show you here, Mr. O'Lein, a kind of a reddish colored card—postal card—bearing, aside from the—I will [fol. 14] try to read the thing into evidence as it is. Bearing in the upper left-hand corner a block in black, with a hollow circle, reading, "Postage will be paid by addressee,"

and in the right-hand upper corner, in a similar block, "No postage stamp necessary if mailed in the United States," and a postal cancellation "Ventura, Calif., 1944," and in the center of the target stamp "Aug. 20 5 P. M. Business reply card. First National Benefit Society, First National Bank Building, Phoenix, Arizona." And on the reverse, across the top of the card, "No obligation—Fill in—Mail today. First National Benefit Society, First National Bank Building, Phoenix, Arizona.". The words in printing, "Gold Seal Emblem of Dependability." And the message, "Please send me, without obligation, details of 'Gold Seal' Policies. Full Name Alvin J. O'Lein. Street Address 1561 Santa Ynez. City of Ventura. State Calif." And underneath that the words, "We pay postage." Will you look at the writing on there, Mr. O'Lein, and state if that is your signature (handing document to the witness.)

A. That is.

Q. (Continuing) Or tell me if that is your signature.

A. That is.

Q. Is that the card which you signed and to which Mr. Robertson made reference when he stated he had gotten your inquiry?

A. That is right.

Q. That is the only insurance company you have in mind [fol. 15] when you say "The National Insurance Company"?

A. That is the company I have in mind.

Q. So you actually mean the First National Benefit Society?

A. That is right.

Mr. Hathaway: Mr. Weaver has just handed me this card. I asked him if it would be satisfactory to receive it in evidence—or to offer it, and I am offering it with his consent.

The Court: As People's Exhibit No.——

Mr. Hathaway: People's Exhibit 1.

(The document was thereupon received in evidence and marked People's Exhibit No. 1.)

Q. What did he say to you? If you will just detail the conversation to the best of your ability, what he said and what you answered.

A. As near as I remember, he said he came in response to this card that I had mailed. And I said to him I had

mailed such a card. And then he started explaining his policy to me, and one thing another.

Q. Did he state that he had the authority to sell the insurance to you?

A. I do not believe that was mentioned. I do not believe I questioned whether he had authority to sell it or not.

Q. But he did discuss insurance policies with you?

A. He did.

Q. Did he solicit your purchasing of a policy of insur-
[fol. 16] ance?

A. He did.

Q. With that company?

A. He did.

Q. What was the deal on the policy, if you did buy a policy?

A. The deal was a fellow my age—I do not know whether that was mentioned particularly or not—usually has trouble in getting some insurance. That is the reason I sent the card in the first place,—I wanted a little extra insurance, if I could and walk into this thing. And he explained the insurance policy as any insurance man would, and I don't know,—I was hard to convince.

Q. Did you buy a policy?

A. I bought a policy.

Q. What was the premium per month or per year? How much was it to be?

A. I think $36 a year, and I paid a quarter—$9.00.

Q. Was there anybody else there besides Mr. Robertson and yourself?

A. Mrs. O'Lein was there in the house.

Q. Did she buy a policy?

A. Yes.

Q. During this whole discussion you and Mrs. O'Lein and Mr. Robertson were present?

A. She was in the kitchen most of the time, and after talking with him a while I called her in, and I said, "I believe this looks all right. Let's buy a couple of them." I do not know that she said much of anything, but to go ahead and do as I pleased about it.

Q. How much of a check did you give Mr. Robertson?

A. $18.00.

Q. What did that cover?

A. A quarter on each policy.

[fol. 17] Q. That is, on the policy to be issued to you and the policy to Mrs. O'Lein?

A. Yes, sir.

Q. How was the check made out? Was it made out to the First National Benefit Society?

A. No; it was made out to Mr. Robertson. He asked if I would just as soon make the check payable to him, and I said I guessed it was all right, and I did.

Q. I show you here a check, Mr. O'Lein, drawn on the check form of Ventura Branch, Bank of America National Trust and Savings Association, the number being blank, "Ventura, Calif., Aug. 29, 1944. Pay to the order of Fred Robertson, $18.00" in words and figures, and signed "A. J. O'Lein," bearing on the reverse the endorsement "Fred Robertson." Will you look at that check and tell me if that is the check which you gave to Mr. Robertson (handing check to the witness.)

A. That is it.

Q. (Continuing.) In payment of the insurance?

A. Yes, that is my check.

Mr. Hathaway: If the court please, I would like to offer this in evidence as People's Exhibit No. — or let me go further.

Q. This check was returned to you from the Bank of America with your regular monthly statement in the following month?

A. Yes, sir.

Q. That is, cashed and passed through the bank?

A. Yes, sir.

[fol. 18] Mr. Hathaway: I offer this check in evidence as People's Exhibit No. 2, if the court please.

(The check was thereupon received in evidence and marked People's Exhibit No. 2.)

Q. Did you receive anything from Mr. Robertson as evidence of payment of the two quarterly payments you have mentioned?

A. Yes. There was a little, narrow slip, I believe, that was torn off from each policy, about that wide (indicating) and that long (indicating).

Q. The policy or the application?

A. The application.

Q. You filled in an application at that time?

A. I filled in an application.

Q. And you did not receive the policy that day, did you?

A. No. I did not receive the policy for several days.

Q. And the receipt which you got came from the bottom, you say, torn off of the application form?

A. I believe that is where it came from,—a little, narrow slip. I believe I gave that to you.

Q. Did Mrs. O'Lein receive one at the same time?

A. She did.

Q. I will show you here, Mr. O'Lein, what purports to be a receipt, on a narrow blue slip of paper, and it bears the heading, "First National Benefit Society. Date 8-29-44. Receipt," and the words, "Received of Alvin J. O'Lein the sum of"—and then a certain portion of it has been crossed [fol. 19] out—"Certificate into the First National Benefit Society. Deputy (signed) Fred Robertson. Address L. A. First National Bank Building, Phoenix, Arizona," and certain other words, and at the top, in hand-written script, "Pd. $9.00 (in figures) Sept-Oct-Nov." On the back of this there are certain other figures, which, as far as I know, have no bearing on this case. Have you seen that before, sir? (Handing document to the witness.)

A. Yes, sir.

Q. What is that?

A. That is the slip that I got, which was torn off of the bottom of the application.

Q. Did you ever see the slip which Mrs. O'Lein received?

A. Yes. He handed them both to me.

Q. I show you a document on the same paper and in the same form, and it appears to be the same in every respect, except in the words "Received of Vendla S. O'Lein," and ask you if you have seen this document before. (Handing document to the witness.)

A. Yes, sir.

Q. What is that?

A. That is the same as this one right here (indicating). He handed me them both—handed them both to me. That is torn off the bottom of her application.

Mr. Hathaway: If the court please, I offer these two documents in evidence, in the order in which they were identified, as People's Exhibits 3 and 4, I believe. In other [fol. 20] words, 3 would be the receipt of Alvin J. O'Lein,

and 4 would be the receipt of Vendla S. O'Lein, if they might be appropriately marked.

(The documents were thereupon received in evidence and marked, respectively, People's Exhibit No. 3 and People's Exhibit No. 4.)

Q. Did you ever receive a policy from the First National Benefit Society?

A. Yes, sir.

Q. I will show you here, Mr. O'Lein, a document which is captioned on its face "Application for Membership, First National Benefit Society," and so forth, and in the upper left-hand corner, underneath the caption, "Policy No. 154476. Date issued 9-1-44," and, for brevity's sake, I will not read this entire document into the evidence. Have you ever seen this before, sir? (Handing document to the witness.)

A. Yes, sir.

Q. Is that the policy of insurance which was issued to you?

A. That is the policy.

Q. (Continuing.) By the First National Benefit Society?

A. That is it.

Q. And the only policy you bought from them or had issued to you?

A. Yes, sir.

Q. How did you receive that?

A. By mail.

Q. Do you know about when that came in?

A. I would say probably the 3rd or 4th of September. It was only a few days.

Q. Was it just recently?

[fol. 21] A. Yes; just this month,—early in the month.

Q. I see.

A. Just a few days after I wrote the application.

Mr. Hathaway: If the court please, I offer this document in evidence as People's Exhibit No. 5.

(The document was thereupon received in evidence and marked People's Exhibit No. 5.)

Mr. Hathaway: I believe that is all. Just a minute, Mr. O'Lein. Mr. Weaver may want to cross-examine you.

Cross-examination.

By Mr. Weaver:

Q. Mr. O'Lein, you say you received the policy itself through the mail?

A. Yes, sir.

Q. You signed an application, did you not, for Mr. Robertson?

A. I did.

Q. That was an application for a policy, was it not?

A. Yes, sir.

Mr. Weaver: Where is the policy?

Mr. Hathaway: It is in evidence.

(The document was thereupon handed to Mr. Weaver.)

By Mr. Weaver:

Q. I notice, Mr. O'Lein, on the front of the policy which you received, filled in in typewriter, a copy of an application.

A. Yes.

Q. Is that the copy of the application that you made for [fol. 22] the policy itself?

A. It might be in here. It is not the one I signed.

Q. No, but is it the same application?

A. Well, I would not be sure. I think so. It looks like it.

Q. Then did you receive any other notation with the policy, when it came, any other document or paper or notation?

A. I think there was a kind of a welcome message to the Society.

Q. And a notification to make all payments direct to the Society at Phoenix, Arizona?

A. I do not recall that.

Q. In your discussion with Mr. Robertson was there a statement as to how these premiums were to be made—premium payments were to be made?

A. I do not recall that.

Q. Were you to pay them to Mr. Robertson?

A. No; I imagine they were to be paid to the company. I do not just remember that part of the conversation.

Q. Mr. O'Lein, did you say you have had some trouble in getting insurance?

A. At my age a fellow usually does.

Q. And that is the reason that you applied to this particular company for a policy?

A. That is the reason I became interested in that policy. I think I had heard something about that policy over the radio and seen literature, and it was just handy.

Q. You heard about the Society before and then when you got the card you mailed the card in?

[fol. 23] A. I guess just because the card was right there handy, and I wrote my name and threw it in with some other mail. I expected to hear some more by mail from them.

Q. You knew that the company was an Arizona company?

A. Yes.

Q. At the time that you applied?

A. Yes.

Q. Have you been given any information by anyone about the stability of this company?

A. Well, not particularly, no.

Q. Why did you file a complaint?

A. A gentleman from the Insurance Commission called on me.

Q. Had you inquired of him about the policy?

A. No. Another insurance man came out and seen me about it after he had heard that I bought it.

Q. What company did that man represent?

A. I am not sure. I do not remember. But we did not talk much about it or anything like that. He just asked these questions and then the next day, I think it was, this man came from the Insurance Commission.

Q. You were satisfied with the transaction until someone from the Insurance Department approached you about it?

A. That is right. I did not give it much thought or anything else. I just figured it was not a very big investment and if it was all right it would be enough to have for a coffin and something like that.

Q. A policy in this company?

A. Yes.

[fol. 24] Q. You did not give us your present address.

A. I beg pardon?

Q. Your present address, where you live now.

A. Gosh, I don't live.

Q. I mean, what is your mail address now.

A. It will be St. Paul, Minnesota, for the next six months.

Q. You do not know what street or number?

A. Yes. 689 Simpson Avenue.

Q. But within that time it is here at the same address in Ventura?

A. It was at that time, but we have given up that address now and we are leaving to go down there. We will be gone six or eight months all together, going down to take care of my mother.

Q. Oh, I see.

A. At the present time I am a man without a country.

Q. Excuse me.

A. Or I mean a state.

Mr. Weaver: That is all.

Mr. Hathaway: Pardon me just a minute.

Redirect examination.

By Mr. Hathaway:

Q. Do I understand—I probably misunderstood you also. You are leaving to spend the next six months in St. Paul?

A. Yes.

Q. Minnesota?

A. Yes. Five, six, seven or eight months, something like that. I do not know just exactly.

[fol. 25] Q. At the time when you bought this policy, Mr. O'Lein, did you know that the First National Benefit Society was not an admitted company or admitted insurance carrier within the State?

A. I did not.

Q. Did you know whether or not Mr. Robertson did or did not have a license to sell insurance in the State of California?

A. I did not.

Q. And he did not discuss it with you?

A. No, he did not. Nothing was said about that at all.

Mr. Hathaway: I believe that is all.

Mr. Weaver: That is all.

(Witness excused.)

Mr. Hathaway: Mrs. O'Lein.

VENDLA SANDBERG O'LEIN, called as a witness on behalf of the People, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Hathaway:

Q. Will you state your full name, please?

A. Vendla Sandberg O'Lein. I usually write it "S."

Q. Is that V-e-n or V-a-n?

A. It is V-e-n-d-l-a.

Q. I wondered whether it was spelled wrong and should be V-a-n. You are the wife of A. J. O'Lein, who was just on the witness stand?

A. I am.

Q. And lived at the time he mentioned at 1561 Santa Ynez Street?

A. Yes.

[fol. 26] Q. At the same place that he did?

A. Yes.

Q. Do you remember seeing Mr. Robertson, who sits here in court?

A. I do.

Q. And when was that?

A. Well, I cannot state the exact date, but it was the latter part of August.

Q. Was it at the same time or under the same circumstances——

A. It was.

Q. (Continuing)—as just testified to by Mr. O'Lein?

A. Yes, it was.

Q. Did you not enter into the conversation with Mr. Robertson with reference to the purchase of a policy of insurance?

A. No, I cannot say that I did, because I had work to do and I just did not have time to stay in there and listen to the conversation. Mr. O'Lein was taking care of it, and after while Mr. O'Lein called me in and said, "I believe we should buy some of this insurance," and I said, "All right. Go ahead." And that was all there was to that, and I went back to my work.

Q. And you signed an application?
A. Yes.
Q. To give Mr. Robertson the information?
A. Yes.
Q. Who filled in the application form?
A. Mr. Robertson.
Q. You answered the questions that were to be filled in there?
A. Yes. I cannot remember that I answered more than one question. He asked me if I had had a doctor in the last five years, which I said I had not.
[fol. 27] Q. But you did generally answer the questions?
A. Oh, yes.
Q. Which he asked you?
A. I did.
Q. And he filled them in on a form which he had; is that right?
A. Yes, that is right.
Q. Were you there when Mr. O'Lein gave him the check and Mr. Robertson gave him a receipt or receipts?
A. I was not right in the room. The kitchen is right off the living room over there and I was in the next room. I remember, though, asking Mr. Robertson how much money it would take today, and he said $12.00. That was evidently for two months. Mr. O'Lein gave him a check for $18.00, covering the period of three months.
Q. Did you see Mr. Robertson give Mr. O'Lein the receipts which have been read into evidence here?
A. I saw the receipts afterwards. I do not recall that I saw him give them to him.
Q. I see. Did you later yourself receive a policy of insurance?
A. Yes, I did.
Q. From the First National Benefit Society?
A. I did.
Q. And about when did you receive such a policy?
A. The first part of September, and I cannot give the exact date.
Q. Fairly recently?
A. Yes.
Q. I will show you what purports to be an application [fol. 28] and policy—or copy of an application for membership and policy, bearing No. 1554477, date issued 9-1-44, and

ask you if you have ever seen this document before. (Handing document to the witness.).

A. I think so. This is the policy I received in the mail.

Q. And that, you state, you received recently, shortly after the first of September?

A. Yes.

Q. And this is the only policy of insurance that you have ever bought or had issued to you by the First National Benefit Society?

A. It is.

Mr. Hathaway: If the court please, I would like to offer this in evidence as People's Exhibit next in order. I think it is No. 6.

The Court: No. 6.

Mr. Hathaway: It is in form the same as the policy which was just immediately previously offered.

(The document was thereupon received in evidence and marked People's Exhibit No. 6.)

Q. Did you hear any of the conversation between Mr. Robertson and Mr. O'Lein?

A. I heard part of it, in an offhand way. I was in the next room and I would catch a word here and there.

Q. Did Mr. Robertson discuss with Mr. O'Lein the various phases of the insurance to be covered by the policy,—if you heard? If you did not, say no.

[fol. 29] A. No, I do not believe I really heard that.

Q. In your presence did Mr. Robertson make any comment as to whether or not the First National Benefit Society was an admitted insurance carrier in the State of California?

A. He did not.

Q. Did he state whether he was or was not a licensed insurance agent, solicitor or broker in the State of California?

A. Not to my knowledge, he did not.

Mr. Hathaway: I believe that is all.

Cross-examination.

By Mr. Weaver:

Q. I just wanted to see the last exhibit a moment. I will show you what purports to be an insurance policy,

marked People's Exhibit No. 6, bearing on the front a purported copy of an application for insurance. As near as you can remember, is this the application that you signed?

A. Well, I did not read the application, but it looks like it would be the application. I know I signed an application.

Q. It gives the name of your husband?

A. Yes.

Q. And your occupation as housewife?

A. Yes.

Q. And that you have not suffered any acute or chronic disease, and you answered that "No"?

A. Yes.

Q. And that you were in good health, and these are apparently the answers that you signed?

A. Yes; they are.

Q. Do you know how the policy was received,—whether [fol. 30] it was received through the mail or delivered?

A. It was through the mail.

Mr. Weaver: I believe that is all.

Mr. Hathaway: Just a minute. I believe that is all from this witness.

The Witness: Thank you.

(Witness excused.)

Mr. Hathaway: Mr. O'Lein, would you return to the stand for just a moment, please?

A. J. O'Lein, recalled as a witness on behalf of the People, having been previously duly sworn, testified as follows:

Direct examination.

By Mr. Hathaway:

Q. Mr. O'Lein, you have been sworn in this matter a few moments ago. I would like to go back for just a moment to the first time that you saw Mr. Robertson. I believe you stated that was on or about the 28th day of August, 1944, and you stated that he came to the house there, and, if I am correct—and, if I am wrong, you correct me—introduced himself to you. Now, I am not sure as to certain questions I asked you before and I would like to go over them, sub-

ject to objection. Will you state what happened when he first introduced himself to you, again, in case I have overlooked anything?

A. He told me he came in response to this card, and [fol. 31] showed me the card and asked me if I sent that card, and I said I did. And I asked him to come in, and he came in and sat down and he started in explaining his policy and his deal.

Q. I assume you asked him as to any of the phases——

A. I do not believe——

Q. (Continuing)—or matters to be covered by the policy?

A. Well, I think he read the benefits—told me the benefits of the policy. I do not know if he read them or not. He told me what the benefits of the policy were and what the cost was, and one thing another. In fact, I did not think seriously of it. I thought was all right. He told me I did not need a medical examination, and at my age it was still O. K., I could still get insurance. And I think that is all there was to it. I do not think we talked very long about the policy.

Q. Did he suggest to you that you should purchase the insurance?

A. Oh, yes, yes, naturally.

Q. Did he ask you whether you desired to and would file an application for the purchase of such a policy?

A. He did. And after I had called Mrs. O'Lein,—I mentioned it to her and thought it was all right and that we ought to buy it, and it was all right, and he started writing the application.

Q. And filling in the application; who filled in the document itself,—the application form?

[fol. 32] A. Mr. Robertson did.

Q. He asked you certain questions?

A. He asked me certain questions.

Q. And you answered him and he filled in the answers?

A. Yes, sir.

Q. And thereafter you paid by check, which we have had here before, and he gave you the receipts which you have been shown here?

A. Yes, sir.

Mr. Hathaway: I believe that is all.

The Court: Mr. Weaver?

Cross-examination.

By Mr. Weaver:

Q. From your understanding, when were you to make your next payment?

A. Well, I understood that this was three months and then there would be another payment due.

Q. And that was to be mailed to the home office at Phoenix, was it?

A. I do not remember that. I imagine that was said, but I do not just recall that anything was said about it. But I suppose it was.

Q. What was your idea?

A. I believe he did say that I would receive notices from the home office when my policy was due.

Q. He said you were to receive notices from the home office?

A. Yes, when more premiums were due.

[fol. 33] Mr. Weaver: That is all.

Mr. Hathaway: That is all.

(Witness excused.)

Mr. Hathaway: Mr. Boraker.

Kenneth F. Boraker, called as a witness on behalf of the People, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Hathaway:

Q. Will you state your full name, please?

A. Kenneth F. Boraker.

Q. Where do you live?

A. Los Angeles; 1436 Avenue 47.

Q. And with whom are you employed?

A. By the State of California, the Department of Insurance.

Q. Have you, at my request, investigated the records of the Department of Insurance, or whatever its appropriate name is,—the department of the State of California which

has to do with the admittance or refusal to admittance of insurance companies to practice in the State of California?

A. I have.

Q. Have you, in that connection and in that regard, investigated the present standing—or the standing, I should say, of the First National Benefit Society of Phoenix, Arizona, as of the 28th day of August, 1944, and for a short [fol. 34] period of time or reasonable period of time before and after that date?

A. I have.

Mr. Weaver: Just a minute. I would like to make an objection to it, unless I understand you. Is it the standing of the Society, as to its being admitted in this State?

Mr. Hathaway: Its admission or non-admission in the State. In other words, if it is admitted in the State—or was during that period of time.

Mr. Weaver: We will stipulate it is not admitted, if that will help any. I did not understand the question.

By Mr. Hathaway:

Q. What did you find with reference to its standing, as to admission to do insurance business in the State of California, on or about that date?

A. I found that it did not have a certificate of authority to do business in the State of California on or about that date.

Q. Did you likewise, at my request, investigate to ascertain whether or not O. F. Robertson, F. O. Robertson, or Fred Robertson, the defendant here in court, did or did not have a license to act as insurance agent, solicitor or broker within the State of California?

A. I have.

Q. And what was his standing in that regard?

A. Our records show that he has no license of any kind.

Q. What was his standing on or about the 28th day of [fol. 35] August, 1944?

A. He had no license at that time.

Mr. Hathaway: I believe that is all.

Mr. Weaver: No questions.

Mr. Hathaway: That is all.

The Court: No questions?
Mr. Weaver: No questions.

(Witness excused.)

Mr. Hathaway: The People rest.

Mr. Weaver: The defendant also rests. I would like, however, before the court's decision, to make just a short argument, to present our theory of this case, whenever the court is ready to hear that. Are you ready to hear that?

The Court: I am ready to hear that at this time.

(Arguments of counsel for the respective parties.)

The Court: It is the court's thought on the matter, it is not a matter of the integrity of the insurance company. That is not at issue at all,—the integrity of the company. Mr. Weaver, do you waive time for the pronouncement of judgment?

Mr. Weaver: Your Honor, I am in somewhat of a quandary. We want to appeal it and I am a little bit in a quandary. We only have five days in which to get that statement of appeal from the time that we file the notice of appeal. If judgment is passed now, then I must file notice of appeal immediately, in order to avail Mr. Robertson of [fol. 36] a bond,—leaving only five days to be back here with a statement on appeal.

Mr. Hathaway: If I may suggest, if the court please, we have not quite arrived at the stage of waiving time for the pronouncement of judgment. Your Honor has not found yet whether the defendant is guilty or not guilty of counts 1 and 2, and, of course, you could not pronounce judgment until that finding has been made.

Mr. Weaver: I understood the Judge was just giving a little information to me before making it final.

JUDGMENT

The Court: It is the judgment of the court that the defendant is guilty on both counts, counts 1 and 2, as shown by the evidence.

Mr. Weaver: I wonder if the court could continue that until about Friday?

The Court: Is that agreeable to the People?

Mr. Hathaway: Yes. I realize Mr. Weaver is working at a disadvantage.

The Court: He is rather handicapped for time.

Mr. Hathaway: Of course, your Honor, he has the right to ask for a continuance up to five days for the pronouncement of judgment. We have discussed a potential date and I think that Friday—which is the 29th, if I am not mistaken——

Mr. Weaver: Yes.

Mr. Hathaway: (Continuing)—is agreeable to me, and I believe it is to Mr. Weaver. Would you rather have it in the morning or afternoon?

[fol. 37] Mr. Weaver: The afternoon would be better.

Mr. Hathaway: 2:00 p. m., if it is convenient to the court's calendar.

The Court: 9-29-44, 2:00 p. m., is that correct?

Mr. Weaver: Yes, your Honor.

The Court: That is agreeable to both the People and the defendant?

Mr. Weaver: Yes, your Honor.

Mr. Hathaway: Yes, your Honor.

(Thereupon an adjournment was taken until Friday, September 29, 1944, at the hour of 2:00 o'clock p. m.)

Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 38] JUSTICE'S CERTIFICATE

STATE OF CALIFORNIA,
County of Ventura, ss:

I hereby certify that D. L. Hossack, Official Reporter pro tem, was by me duly sworn to report in shorthand, and did so report, the testimony and proceedings had on the preliminary examination in the above-entitled matter, and I further certify that the annexed and foregoing transcript consisting of 27 pages, numbered from 1 to 27, inclusive, is a full, true and correct transcript of such testimony and proceedings.

Dated at Ventura, California, this 29th day of September, 1944.

(Signed) Glenn D. Corey, Justice of the Peace in and for Ventura Township. (Seal.)

In the Justice's Court of [illegible] Township

County of Ventura, State of California

The People of the State of California
Plaintiff

vs.

[illegible]

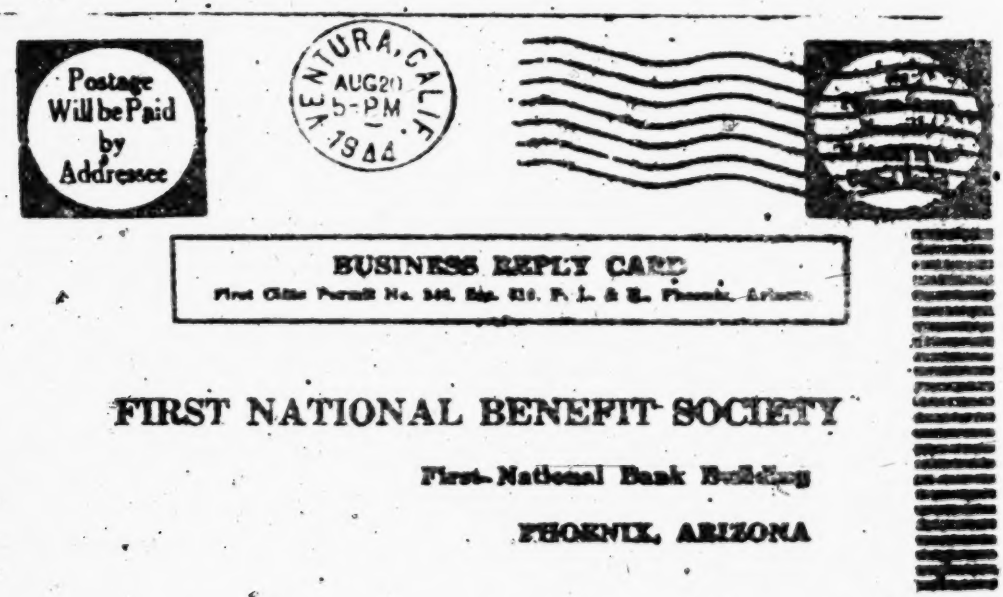
Defendant

People's Exhibit

No. 1, one

Received in Evidence 1-26 1944

[illegible]
Justice of the Peace



NO OBLIGATION—FILL IN—MAIL TODAY

FIRST NATIONAL BENEFIT SOCIETY
First National Bank Building
Phoenix, Arizona

Received in Evidence 1-26 1944

Justice of the Peace

Postage Will be Paid by Addressee

VENTURA, CALIF. AUG 20 5-PM 1942

BUSINESS REPLY CARD

First Class Permit No. 168, Sec. 510, P. L. & R., Phoenix, Arizona

FIRST NATIONAL BENEFIT SOCIETY

First National Bank Building

PHOENIX, ARIZONA

NO OBLIGATION—FILL IN—MAIL TODAY

FIRST NATIONAL BENEFIT SOCIETY
First National Bank Building
Phoenix, Arizona

GOLD Emblem of IDEAL Dependability.

Please send me, without obligation, details of "GOLD SEAL" POLICIES.

Full Name Calvin J. O'Linn

Street Address 1561 Santa Inez

City Ventura State Calif

WE PAY POSTAGE

39

In the Justice's Court of Ventura Township

County of Ventura, State of California

The People of the State of California *Plaintiff*

vs.

E. [illegible]

Defendant

People's Exhibit

No(2) Two

Received in Evidence 7-26 1944

[illegible] Carey

Justice of the Peace

90-342 VENTURA BRANCH 90-342

Bank of America No. [illegible]

NATIONAL TRUST & SAVINGS ASSOCIATION

VENTURA, Calif. [illegible] 29 1944

PAY TO THE ORDER OF Fred [illegible] $ 19 00

[illegible] DOLLARS

Signature [illegible]

[illegible]

PAID

[illegible]

In the Justice's Court of Ventura Township
County of Ventura, State of California

The People of the State of California
vs. Plaintiff

F. Robertson
Defendant

People's Exhibit
No. (31 Thirty-one)

Received in Evidence 7-26 1944

Justice of the Peace

1 S 7.00 Sept-Dec-Nov

RECEIPT **First National Benefit Society** Date 8-29-44

RECEIVED OF Alvin C. Crain
the sum of $6.00 [redacted] Certificate into the FIRST NATIONAL BENEFIT SOCIETY
Deputy F. E. Robertson Address R.A.

FIRST NATIONAL BANK BUILDING, PHOENIX, ARIZONA
Covers All Payments Until First Day of Second Month Following Date of Application
IF CERTIFICATE IS NOT RECEIVED IN TEN DAYS NOTIFY HOME OFFICE
Membership Fee payable in advance (Payable once only) SAFE—CONSERVATIVE—SOUND

41

In the Justice's Court of Ventura Township
County of Ventura, State of California

The People of the State of California *Plaintiff*
vs.
F O Robertson
Defendant

People's Exhibit
No. 41

Received in Evidence 9-26 1944
Clerk A Corey
Justice of the Peace

[redacted] Vol 89 — Sept - Oct - Nov

RECEIPT **First National Benefit Society** Date 8-24-44

RECEIVED OF Venetia J Olson

the sum of [redacted] Certificate into the FIRST NATIONAL BENEFIT SOCIETY

Deputy F O Robertson Address [illegible]

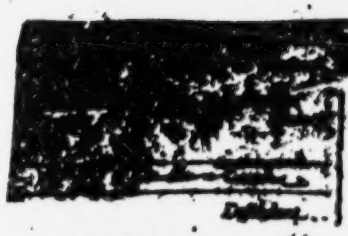
FIRST NATIONAL BANK BUILDING, PHOENIX, ARIZONA

Covers All Payments Until First Day of Second Month Following Date of Application

IF CERTIFICATE IS NOT RECEIVED IN TEN DAYS NOTIFY HOME OFFICE

Membership Fee payable in advance (Payable once only) SAFE—CONSERVATIVE—SOUND

42



People's Exhibit
No. 60

Form 1000

APPLICATION FOR MEMBERSHIP

First National Benefit Society

A NON-PROFIT CO-OPERATIVE CORPORATION

First National Bank Building — Phoenix, Arizona

MEMBERSHIP FEE $4.00, PAYABLE IN ADVANCE, ALL AGES

Policy No. 154476 — Date Issued 9-1-44

APPLICATION TO BE FILLED OUT IN INK ONLY

SEE REVERSE SIDE OF THIS APPLICATION

PREMIUM TABLE

Annually	$36.00
Semi-Annually	18.00
Quarterly	9.00
Monthly	3.00

Full Name? Alvin J. O'Lein — Date? 9-1-44

Address?. 1561 Santa Ynez St. (Street), Ventura (City), Calif. (State)

Date of Birth? 7-15-1885 — Age? 59 — Sex? Male

Height? 6 feet 2 inches — Weight? 200 — Occupation? Real Estate Broker

Beneficiary? Vendla S. O'Lein

Relation of Beneficiary? Wife

Have you consulted a Doctor during the past five years? yes (Yes or No)

Give Details Strept throat in 1942, no ill effects

Do you now or have you ever had any chronic or acute disease? no (Yes or No)

If so, give details

Are you now in strong and vigorous health? yes (Yes or No) — Are your habits temperate? yes (Yes or No)

Do you agree that the Membership applied for shall not take effect until this application is approved by The Society and the Certificate issued? yes (Yes or No)

Have you read the copy, on the reverse side hereof, of the Certificate applied for? yes (Yes or No)

Have you ever been refused life insurance? no (Yes or No)

Do you authorize any Doctor, Hospital or Sanitarium, at any time, to give the Society any information they may have regarding your physical condition? yes (Yes or No)

Do you represent the answers to the above questions and statements contained herein are true and correct and do you agree that any false statement, misrepresentation or concealment of any material fact in this application, shall for a period of two full years from date of Certificate limit the amount payable under the Certificate to the total amount paid in Premiums thereon? yes (Yes or No)

ALVIN J. O'LEIN (WRITE NAME — DO NOT PRINT) — APPLICANT

Individual Contracting Member

If Applicant is a minor have Parent or Guardian sign Application

Mail Certificate to Applicant ☐ — Individual Contracting Member ☐

ADDITIONAL PROVISIONS

This Certificate is free from restrictions as to Aeronautics and Military or Naval service either in time of peace or in time of war.

After two full years from date hereof or any reinstatement hereunder, during the lifetime of the Member, this Certificate shall become incontestable except for the non-payment of Premiums or Assessments within the time specified herein or in the event of suicide as herein provided.

The Member shall not be liable for any debts of the Corporation or for any other obligation save and except the Dues required herein and then only so long as the Certificate remains in force and effect.

Should this Certificate lapse for non-payment of any Premium or Assessment it may be reinstated within [illegible] days from date of lapse or after notice of lapse, whichever is longer, upon written Application to the Corporation and to the Corporation's satisfaction of insurability satisfactory to the Society and the payment of all arrearages. As a result of such reinstatement the benefits provided by this Certificate shall be reduced and the life units accrued shall remain in effect as if no lapse occurred.

Any valid Claim against the Corporation shall be paid within Sixty (60) days from the date of filing at the Home Office of the Corporation, acceptable proof of loss together with satisfactory evidence of the interest of the claimant.

SUICIDE OR SELF-DESTRUCTION, WHETHER SANE OR INSANE IS NOT A RISK ASSUMED UNDER THIS CERTIFICATE EXCEPT FOR THE RETURN OF THE PREMIUMS PAID HEREON.

This Certificate shall be absolutely free from all conditions as to residence, travel, occupation, place or manner of death. False statement, misrepresentation or concealment of any material fact in the Member's application for this Certificate shall, for a period of two full years from the date hereof or from the date of any reinstatement hereof, limit the amount payable to the sum paid on Premiums by the Member on this Certificate and no more.

"GOLD SEAL" Single Life Certificate Provides for—Accumulated Increase—Death Benefits—Dividends to Living Member

CASH DIVIDENDS PAYABLE TO THE LIVING MEMBER—DEATH BENEFITS PAYABLE TO BENEFICIARY OF DECEASED MEMBER

World-Wide Coverage — Covers Death From Any Cause — Benefits Are Non-Cancellable

Number 184478

See Schedule for Ages

Age 59

First National Benefit Society

A Non-Profit Co-Operative Corporation

HOME OFFICE - - - PHOENIX, ARIZONA

PREMIUM TABLE	
Annually - - - - -	$60.00
Semi-Annually - - -	15.00
Quarterly - - - - -	7.50
Monthly - - - - - -	2.50

Any premium deposit as shown opposite may be made on any premium deposit due date.

DOES HEREBY ADMIT AS A MEMBER

** ALVIN J. O'LEIN **

Whose Beneficiary Is ** VENILA S. O'LEIN, WIFE **

AND WILL PAY AS FOLLOWS:

SCHEDULE OF BENEFITS

ENTRANCE AGE DETERMINES AMOUNT PAYABLE.

Age at Issue	Amount of Benefit	Age at Issue	Amount of Benefit	Age at Issue	Amount of Benefit	Age at Issue	Amount of Benefit
10 to 15	$1875.00	29	$1410.00	43	$ 915.00	57	$ 495.00
16	$1845.00	30	$1366.00	44	$ 885.00	58	$ 480.00
17	$1800.00	31	$1335.00	45	$ 855.00	59	$ 465.00
18	$1770.00	32	$1290.00	46	$ 825.00	60	$ 435.00
19	$1740.00	33	$1260.00	47	$ 780.00	61	$ 405.00
20	$1710.00	34	$1230.00	48	$ 750.00	62	$ 375.00
21	$1680.00	35	$1200.00	49	$ 720.00	63	$ 345.00
22	$1650.00	36	$1155.00	50	$ 690.00	64	$ 315.00
23	$1620.00	37	$1125.00	51	$ 660.00	65	$ 300.00
24	$1575.00	38	$1080.00	52	$ 630.00	66	$ 285.00
25	$1545.00	39	$1050.00	53	$ 600.00	67	$ 270.00
26	$1500.00	40	$1020.00	54	$ 585.00	68	$ 255.00
27	$1470.00	41	$ 975.00	55	$ 555.00	69	$ 240.00
28	$1440.00	42	$ 945.00	56	$ 525.00	70	$ 225.00

to the Beneficiary herein named, upon receipt by the Corporation at its Home Office of due proof that the Member herein named died while this Certificate was in full force and effect, subject, however, to all the terms and conditions herein contained.

THE MAXIMUM BENEFIT PAYABLE SHOWN OPPOSITE AGE AT ISSUE IN THE ABOVE SCHEDULE SHALL BE DETERMINED BY THE ENTRANCE AGE OF THE MEMBER, AND SHALL INCREASE FIVE (5) PER CENT PER ANNUM FOR EACH YEAR THIS CERTIFICATE REMAINS IN FORCE AND EFFECT FOR A PERIOD NOT OVER TEN (10) YEARS FROM THE DATE HEREOF, BUT IN NO EVENT SHALL THE BENEFITS PAYABLE HEREUNDER BE IN EXCESS OF THE SUM EQUAL TO ONE AND ONE-HALF THE AMOUNT PROVIDED AT AGE OF ENTRANCE OF THE MEMBER ACCORDING TO THE AMOUNT SHOWN OPPOSITE THE AGE AT ENTRY IN THE ABOVE SCHEDULE. IF THE DEATH OF THE MEMBER OCCURS WITHIN SIX MONTHS AFTER DATE OF THIS CERTIFICATE, THE AMOUNT PAYABLE HEREUNDER SHALL BE ONE THIRD OF THE AMOUNT SHOWN OPPOSITE THE AGE AT ENTRY OF THE MEMBER. IF THE DEATH OF THE MEMBER OCCURS MORE THAN SIX MONTHS BUT LESS THAN TWELVE MONTHS FROM THE DATE HEREOF, THE AMOUNT PAYABLE HEREUNDER SHALL BE TWO THIRDS OF THE AMOUNT SHOWN OPPOSITE THE AGE AT ENTRY OF THE MEMBER.

This Certificate is issued in consideration of the Signed Application of the Member, approved at the Home Office of the Corporation and hereby made a part of this Contract, and the payment of the Membership fee in the sum of Six ($6.00) Dollars, receipt of which is hereby acknowledged, and the future payment of all amounts required to be paid by conditions of this Certificate on or before the date due to the Home Office of the Corporation, during the continuance of this Contract.

The Member is entitled to a Grace period of fifteen (15) days following the due date of any Premium or Assessment during which time this Certificate shall not be forfeited.

AND WILL PAY AS FOLLOWS:

SCHEDULE OF BENEFITS

ENTRANCE AGE DETERMINES AMOUNT PAYABLE

Age at Issue	Amount of Benefit	Age at Issue	Amount of Benefit	Age at Issue	Amount of Benefit	Age at Issue	Amount of Benefit
10 to 15	$1875.00	29	$1410.00	43	$ 915.00	57	$ 495.00
16	$1845.00	30	$1365.00	44	$ 885.00	58	$ 480.00
17	$1800.00	31	$1335.00	45	$ 855.00	59	$ 465.00
18	$1770.00	32	$1290.00	46	$ 825.00	60	$ 435.00
19	$1740.00	33	$1260.00	47	$ 780.00	61	$ 405.00
20	$1710.00	34	$1230.00	48	$ 750.00	62	$ 375.00
21	$1680.00	35	$1200.00	49	$ 720.00	63	$ 345.00
22	$1650.00	36	$1155.00	50	$ 690.00	64	$ 315.00
23	$1620.00	37	$1125.00	51	$ 660.00	65	$ 300.00
24	$1575.00	38	$1080.00	52	$ 630.00	66	$ 285.00
25	$1545.00	39	$1050.00	53	$ 600.00	67	$ 270.00
26	$1500.00	40	$1020.00	54	$ 585.00	68	$ 255.00
27	$1470.00	41	$ 975.00	55	$ 555.00	69	$ 240.00
28	$1440.00	42	$ 945.00	56	$ 525.00	70	$ 225.00

to the Beneficiary herein named, upon receipt by the Corporation at its Home Office of due proof that the Member herein named died while this Certificate was in full force and effect, subject, however, to all the terms and conditions herein contained.

THE MAXIMUM BENEFIT PAYABLE SHOWN OPPOSITE AGE AT ISSUE IN THE ABOVE SCHEDULE SHALL BE DETERMINED BY THE ENTRANCE AGE OF THE MEMBER, AND SHALL INCREASE FIVE (5%) PER CENT PER ANNUM FOR EACH YEAR THIS CERTIFICATE REMAINS IN FORCE AND EFFECT, FOR A PERIOD NOT OVER TEN (10) YEARS FROM THE DATE HEREOF, BUT IN NO EVENT SHALL THE BENEFITS PAYABLE HEREUNDER BE IN EXCESS OF THE SUM EQUAL TO ONE AND ONE-HALF THE AMOUNT PROVIDED AT AGE OF ENTRANCE OF THE MEMBER ACCORDING TO THE AMOUNT SHOWN OPPOSITE THE AGE AT ENTRY IN THE ABOVE SCHEDULE. IF THE DEATH OF THE MEMBER OCCURS WITHIN SIX MONTHS AFTER DATE OF THIS CERTIFICATE, THE AMOUNT PAYABLE HEREUNDER SHALL BE ONE THIRD OF THE AMOUNT SHOWN OPPOSITE THE AGE AT ENTRY OF THE MEMBER. IF THE DEATH OF THE MEMBER OCCURS MORE THAN SIX MONTHS BUT LESS THAN TWELVE MONTHS FROM THE DATE HEREOF, THE AMOUNT PAYABLE HEREUNDER SHALL BE TWO THIRDS OF THE AMOUNT SHOWN OPPOSITE THE AGE AT ENTRY OF THE MEMBER.

This Certificate is issued in consideration of the Signed Application of the Member, approved at the Home Office of the Corporation and hereby made a part of this Contract and the payment of the Membership fee in the sum of Six ($6.00) Dollars, receipt of which is hereby acknowledged, and the future payment of all amounts required to be paid by conditions of this Certificate on or before the date due to the Home Office of the Corporation, during the continuance of this Contract.

The Member is entitled to a Grace Period of fifteen (15) days following the due date of any Premium or Assessment during which time this Certificate shall not be forfeited.

DIVIDENDS. The Board of Directors may, at the close of any calendar year, if in their opinion the Mortuary Fund so justifies, make a refund to the Holder of this Certificate but in no event is such sum to exceed Fifty (50) per cent of the amount the Member has contributed to the Mortuary Fund during such year.

The conditions and provisions printed or written by the Society on the reverse side hereof, together with the Amendments added hereto, are a part of this Contract as fully as if recited over the signatures hereto affixed or imprinted hereon.

IN WITNESS WHEREOF, the First National Benefit Society has caused this Certificate to be signed by its President and its Secretary, and its Corporate Seal affixed and is effective this 1st day of SEPTEMBER 1944

M. C. Reese
President

(ADVANCE PREMIUM PAID)
NEXT ~~PREM~~ Payment Due DECEMBER 1, 1944
PAY ALL FUTURE PAYMENTS TO HOME OFFICE ONLY

REGISTER OF CHANGE OF BENEFICIARY

NOTE: NO CHANGE OF BENEFICIARY SHALL TAKE EFFECT UNLESS ENDORSED ON THIS CERTIFICATE BY THE CORPORATION AT ITS HOME OFFICE

DATE ENDORSED	BENEFICIARY	ENDORSED BY

First National Benefit Society

An Arizona Corporation

Certificate No. 154478

ISSUED TO

** ALVIN J. OYLER **

Dated SEPTEMBER 1, 1944

AMOUNT
See Schedule of Benefits
Annual Premium $240.00
Semi-Annual Premium . . 120.00
Quarterly Premium . . . 60.00
Monthly Premium 20.00

"GOLD SEAL"
LIFE CERTIFICATE

• • • •

ACCUMULATION
DEATH BENEFITS
DIVIDENDS

ADDITIONAL PROVISIONS — (Continued)

The Member shall have the right to change the Beneficiary without notice to or consent of such or any Beneficiary by giving notice in writing to the Corporation, upon forms furnished by the Corporation. In the event that the Beneficiary nominated by the Member be dead at the time of the death of the Member, payment hereunder shall be made to the administrator or executor of the estate of the Member. If the Beneficiary be a minor or otherwise legally incompetent, payment of Claim shall be made to the legal guardian of such Beneficiary and in case of dispute as to whom any payment hereunder shall be made the Corporation reserves the right to pay to a court of competent jurisdiction for adjudication.

In the event of a Claim under this Certificate, proper and sufficient proof of death of the Member shall be submitted to the Home Office upon forms furnished by the Corporation for that purpose, furnishing to the Corporation any and all data information or proof as may be required. This Certificate shall be deemed to be made and payable at Phoenix, Arizona.

The lawfully required portion of Premiums paid on this Certificate shall be set aside into the Mortuary Fund. Premiums necessary to maintain this Certificate in force are not fixed amounts and in event of Premium inadequacy may be adjusted with the written approval of the Corporation Commission, for the purposes of payment of claims and general operating expenses. In the event of any deficiency caused by excessive mortality the Corporation may, with the written consent or at the direction of the Corporation Commission, levy Assessments on Members to be placed in the Mortuary Fund.

If the age of the Member has been mis-stated in his Application, the amount payable hereunder shall be such as the Premium paid would have purchased at his or her correct age. In the event that the age of the Member was more than Seventy (70) years at the date of issuance of this Certificate, the Corporation is liable only to the extent of the return of all Premiums paid hereon.

This Certificate, including any written Amendment hereto and the Application therefor, a copy of which appears hereon, shall constitute the entire Contract between the Member and the Corporation.

This Corporation is organized as a Mutual Benefit Corporation and operates under the Benefit Insurance Corporation Law of 1941 Chapter 81, Arizona Session Law of 1941, and reserves all rights according to law.

County of Ventura, State of California

The People of the State of California, Plaintiff

vs.

[illegible] O'Lein, Defendant

People's Exhibit No. (a) Six

Received in Evidence 9-26 1944

[illegible], Clerk of the Court

Form 1940

APPLICATION FOR MEMBERSHIP

First National Benefit Society

A NON PROFIT CO-OPERATIVE CORPORATION

First National Bank Building Phoenix, Arizona

MEMBERSHIP FEE $6.00, PAYABLE IN ADVANCE, ALL AGES

Policy No 154477 Date Issued 9-1-44

APPLICATION TO BE FILLED OUT IN INK ONLY

SEE REVERSE SIDE OF THIS APPLICATION

PREMIUM TABLE

Annually	$36.00
Semi-Annually	18.00
Quarterly	9.00
Monthly	3.00

Full Name? Vendla S. O'Lein Date? 9-1-44

Address? 1561 Santa Ines St. (Street) Ventura (City) Calif. (State)

Date of Birth? 11-13-1885 Age? 58 Sex? Female

Height? 5 feet 4 inches Weight? 160 Occupation? Housewife

Beneficiary? Alvin J. O'Lein

Relation of Beneficiary? Husband

Have you consulted a Doctor during the past five years? No (Yes or No)

Give Details

Do you now, or have you ever had any chronic or acute disease? No (Yes or No)

If so, give details

Are you now in strong and vigorous health? Yes (Yes or No) Are your habits temperate? Yes (Yes or No)

Do you agree that the Membership applied for shall not take effect until this application is approved by The Society and the Certificate issued? Yes (Yes or No)

Have you read the copy, on the reverse side hereof, of the Certificate applied for? Yes (Yes or No)

Have you ever been refused life insurance? No (Yes or No)

Do you authorize any Doctor, Hospital or Sanitarium, at any time, to give the Society any information they may have regarding your physical condition? Yes (Yes or No)

Do you represent the answers to the above questions and statements contained herein are true and correct and do you agree that any false statement, misrepresentation or concealment of any material fact in this application, shall for a period of two full years from date of Certificate, limit the amount payable under the Certificate to the total amount paid in Premiums thereon? Yes (Yes or No)

BY VENDLA S. O'LEIN (WRITE NAME — DO NOT PRINT) APPLICANT

Individual Contracting Member

If Applicant is a minor, have Parent or Guardian sign Application

Mail Certificate to Applicant ☐ Individual Contracting Member ☐

ADDITIONAL PROVISIONS

This Certificate is free from restrictions as to Aeronautics and Military or Naval service either in time of peace or in time of war.

After two full years from date hereof or any reinstatement hereunder, during the lifetime of the Member, this Certificate shall become incontestable except for the non-payment of Premiums or Assessments within the time specified herein or in the event of suicide as herein provided.

The Member shall not be liable for any debts of the Corporation or for any other obligation save and except the Costs required herein and then only so long as the Certificate remains in force and effect.

Should this Certificate lapse for non-payment of any Premium or Assessment it may be reinstated within one year from date of lapse or after notice of lapse, whichever is longer, upon written Application furnishing to the Corporation evidence of insurability, satisfactory to the Society and the payment of all arrearages. As a result of such reinstatement no benefits provided by this Certificate shall be reduced, and the Benefits accrued shall remain in effect as if no lapse occurred.

Any valid Claim against the Corporation shall be paid within Sixty (60) days from the date of filing at the Home Office of the Corporation, acceptable proof of loss, together with satisfactory evidence of the interest of the Claimant.

SUICIDE OR SELF-DESTRUCTION, WHETHER SANE OR INSANE, IS NOT A RISK ASSUMED UNDER THIS CERTIFICATE EXCEPT FOR THE RETURN OF THE PREMIUMS PAID HEREON.

This Certificate shall be absolutely free from all conditions as to residence, travel, occupation, place or manner of death. False statement, misrepresentation, or concealment of any material fact in the Member's application for this Certificate shall, for a period of two full years from the date hereof or from the date of any reinstatement hereof, limit the amount payable to the sum paid in Premiums by the Member on this Certificate and no more.

"CHILD SEAL" Single Life Certificate Provides for—Accumulation Increase—Death Benefits—Dividends to Living Member

CASH DIVIDENDS PAYABLE TO THE LIVING MEMBER—DEATH BENEFITS PAYABLE TO BENEFICIARY OF DECEASED MEMBER

World-Wide Coverage — Covers Death From Any Cause — Benefits Are Non-Cancellable

Number 184477

See Schedule for Ages

Age 50

PREMIUM TABLE	
Annually	$36.00
Semi-Annually	18.00
Quarterly	9.00
Monthly	3.00

First National Benefit Society

A Non-Profit Co-Operative Corporation

HOME OFFICE - - - PHOENIX, ARIZONA

Any premium deposit as shown opposite may be made on any premium deposit due date.

DOES HEREBY ADMIT AS A MEMBER

** VENILA S. O'LEIN **

Whose Beneficiary Is ** ALVIN J. O'LEIN, HUSBAND **

AND WILL PAY AS FOLLOWS:

:- - - SCHEDULE OF BENEFITS - - -:

ENTRANCE AGE DETERMINES AMOUNT PAYABLE

Age at Issue	Amount of Benefit	Age at Issue	Amount of Benefit	Age at Issue	Amount of Benefit	Age at Issue	Amount of Benefit
10 to 15	$1875.00	30	$1410.00	43	$ 915.00	57	$ 495.00
16	$1845.00	30	$1365.00	44	$ 885.00	58	$ 480.00
17	$1800.00	31	$1335.00	45	$ 855.00	59	$ 465.00
18	$1770.00	32	$1290.00	46	$ 825.00	60	$ 435.00
19	$1740.00	33	$1260.00	47	$ 780.00	61	$ 405.00
20	$1710.00	34	$1230.00	48	$ 750.00	62	$ 375.00
21	$1680.00	35	$1200.00	49	$ 720.00	63	$ 345.00
22	$1650.00	36	$1155.00	50	$ 690.00	64	$ 315.00
23	$1620.00	37	$1125.00	51	$ 660.00	65	$ 300.00
24	$1575.00	38	$1080.00	52	$ 630.00	66	$ 285.00
25	$1545.00	39	$1050.00	53	$ 600.00	67	$ 270.00
26	$1500.00	40	$1020.00	54	$ 585.00	68	$ 255.00
27	$1470.00	41	$ 975.00	55	$ 555.00	69	$ 240.00
28	$1440.00	42	$ 945.00	56	$ 525.00	70	$ 225.00

to the Beneficiary herein named, upon receipt by the Corporation at its Home Office of due proof that the Member herein named, died while this Certificate was in full force and effect, subject, however, to all the terms and conditions herein contained.

THE MAXIMUM BENEFIT PAYABLE SHOWN OPPOSITE AGE AT ISSUE IN THE ABOVE SCHEDULE SHALL BE DETERMINED BY THE ENTRANCE AGE OF THE MEMBER AND SHALL INCREASE FIVE (5%) PER CENT PER ANNUM FOR EACH YEAR THIS CERTIFICATE REMAINS IN FORCE AND EFFECT, FOR A PERIOD NOT OVER TEN (10) YEARS FROM THE DATE HEREOF, BUT IN NO EVENT SHALL THE BENEFITS PAYABLE HEREUNDER BE IN EXCESS OF THE SUM EQUAL TO ONE AND ONE-HALF THE AMOUNT PROVIDED AT AGE OF ENTRANCE OF THE MEMBER, ACCORDING TO THE AMOUNT SHOWN OPPOSITE THE AGE AT ENTRY IN THE ABOVE SCHEDULE. IF THE DEATH OF THE MEMBER OCCURS WITHIN SIX MONTHS AFTER DATE OF THIS CERTIFICATE, THE AMOUNTS PAYABLE HEREUNDER SHALL BE ONE THIRD OF THE AMOUNT SHOWN OPPOSITE THE AGE AT ENTRY OF THE MEMBER. IF THE DEATH OF THE MEMBER OCCURS MORE THAN SIX MONTHS, BUT LESS THAN TWELVE MONTHS FROM THE DATE HEREOF, THE AMOUNT PAYABLE HEREUNDER SHALL BE TWO-THIRDS OF THE AMOUNT SHOWN OPPOSITE THE AGE AT ENTRY OF THE MEMBER.

This Certificate is issued in consideration of the Signed Application of the Member, approved at the Home Office of the Corporation, and hereby made a part of this Contract and the payment of the Membership fee in the sum of Six ($6.00) Dollars, receipt of which is hereby acknowledged, and the future payment of all amounts required to be paid by conditions of this Certificate on or before the date due to the Home Office of the Corporation, during the continuance of this Contract.

The Member is entitled to a Grace period of fifteen (15) days following the due date of any Premium or Assessment, during which time this Certificate shall not be forfeited.

DOES HEREBY ADMIT AS A MEMBER

•• VENILA S. O'LEIN ••

Whose Beneficiary Is •• ALVIN J. O'LEIN, HUSBAND ••

AND WILL PAY AS FOLLOWS:

:- - - SCHEDULE OF BENEFITS - - -:

ENTRANCE AGE DETERMINES AMOUNT PAYABLE

Age at Issue	Amount of Benefit	Age at Issue	Amount of Benefit	Age at Issue	Amount of Benefit	Age at Issue	Amount of Benefit
10 to 15	$1875.00	29	$1410.00	43	$ 915.00	57	$ 495.00
16	$1845.00	30	$1365.00	44	$ 885.00	58	$ 480.00
17	$1800.00	31	$1335.00	45	$ 855.00	59	$ 465.00
18	$1770.00	32	$1290.00	46	$ 825.00	60	$ 435.00
19	$1740.00	33	$1260.00	47	$ 780.00	61	$ 405.00
20	$1710.00	34	$1230.00	48	$ 750.00	62	$ 375.00
21	$1680.00	35	$1200.00	49	$ 720.00	63	$ 345.00
22	$1650.00	36	$1155.00	50	$ 690.00	64	$ 315.00
23	$1620.00	37	$1125.00	51	$ 660.00	65	$ 300.00
24	$1575.00	38	$1080.00	52	$ 630.00	66	$ 285.00
25	$1545.00	39	$1050.00	53	$ 600.00	67	$ 270.00
26	$1500.00	40	$1020.00	54	$ 585.00	68	$ 255.00
27	$1470.00	41	$ 975.00	55	$ 555.00	69	$ 240.00
28	$1440.00	42	$ 945.00	56	$ 525.00	70	$ 225.00

to the Beneficiary herein named, upon receipt by the Corporation at its Home Office of due proof that the Member herein named died while this Certificate was in full force and effect subject however to all the terms and conditions herein contained

THE MAXIMUM BENEFIT PAYABLE SHOWN OPPOSITE AGE AT ISSUE IN THE ABOVE SCHEDULE SHALL BE DETERMINED BY THE ENTRANCE AGE OF THE MEMBER AND SHALL INCREASE FIVE (5) PER CENT PER ANNUM FOR EACH YEAR THIS CERTIFICATE REMAINS IN FORCE AND EFFECT FOR A PERIOD NOT OVER TEN (10) YEARS FROM THE DATE HEREOF BUT IN NO EVENT SHALL THE BENEFITS PAYABLE HEREUNDER BE IN EXCESS OF THE SUM EQUAL TO ONE AND ONE-HALF THE AMOUNT PROVIDED AT AGE OF ENTRANCE OF THE MEMBER ACCORDING TO THE AMOUNT SHOWN OPPOSITE THE AGE AT ENTRY IN THE ABOVE SCHEDULE. IF THE DEATH OF THE MEMBER OCCURS WITHIN SIX MONTHS AFTER DATE OF THIS CERTIFICATE THE AMOUNT PAYABLE HEREUNDER SHALL BE ONE THIRD OF THE AMOUNT SHOWN OPPOSITE THE AGE AT ENTRY OF THE MEMBER. IF THE DEATH OF THE MEMBER OCCURS MORE THAN SIX MONTHS BUT LESS THAN TWELVE MONTHS FROM THE DATE HEREOF THE AMOUNT PAYABLE HEREUNDER SHALL BE TWO-THIRDS OF THE AMOUNT SHOWN OPPOSITE THE AGE AT ENTRY OF THE MEMBER

This Certificate is issued in consideration of the Signed Application of the Member, approved at the Home Office of the Corporation, all of which is hereby made a part of this Contract, and the payment of the Membership Fee in the sum of Six ($6.00) Dollars receipt of which is hereby acknowledged, and the future payment of all amounts required to be paid by conditions of this Certificate on or before the date due, to the Home Office of the Corporation during the continuance of this Contract.

The Member is entitled to a Grace period of fifteen (15) days following the due date of any Premium or Assessment during which time this Certificate shall not be forfeited.

DIVIDENDS. The Board of Directors may at the close of any calendar year, if in their opinion the Mortuary Fund so justifies, make a refund to the Holder of this Certificate but in no event is such sum to exceed Fifty (50) per cent of the amount the Member has contributed to the Mortuary Fund during such year.

The conditions and provisions printed or written by the Society on the reverse side hereof, together with the Amendments added hereto, are a part of this Contract as fully as if recited over the signatures hereto, affixed or unprinted hereon.

IN WITNESS WHEREOF, the First National Benefit Society has caused this Certificate to be signed by its President and its Secretary, and its Corporate Seal affixed and is effective this 1st day of SEPTEMBER 19 44

M. C. Reese
President

[illegible] Payment Due [illegible] 1, 1944

PAY ALL FUTURE PAYMENTS TO HOME OFFICE ONLY

Secretary

THIS FORM APPROVED BY ARIZONA INSURANCE DEPARTMENT

REGISTER OF CHANGE OF BENEFICIARY

NOTE: NO CHANGE OF BENEFICIARY SHALL TAKE EFFECT UNLESS ENDORSED ON THIS CERTIFICATE BY THE CORPORATION AT ITS HOME OFFICE

DATE ENDORSED	BENEFICIARY	ENDORSED BY

Certificate No. 18417

First National Benefit Society

An Arizona Corporation

ISSUED TO

•• TESLA S. O'[illegible] ••

Dated SEPTEMBER 1, 1944

AMOUNT	
See Schedule of Benefits	
Annual Premium	$24.00
Semi-Annual Premium	12.50
Quarterly Premium	6.00
Monthly Premium	2.00

"GOLD SEAL"
LIFE CERTIFICATE

ACCUMULATION
DEATH BENEFITS
DIVIDENDS

ADDITIONAL PROVISIONS — (Continued)

The Member shall have the right to change the Beneficiary without notice to or consent of such or any Beneficiary by [illegible] notice in writing to the [illegible] at its Home Office, endorsed by the Corporation. In the event that the Beneficiary predeceases the Member or shall be dead at the time of the death of the Member, payment hereunder shall be made to the executor or administrator of the estate of the Member. If the Beneficiary is a minor or otherwise legally incompetent, payment of Claim shall be made to the [illegible] thereof. Payment to such Beneficiary or to such [illegible] the Corporation from any liability on account of such Benefit.

[illegible] Benefit hereunder shall be made the Corporation reserves the right to pay [illegible] Benefit [illegible] Plan to pay [illegible]

In the event of a [illegible] proof of death of the Member shall be submitted to the Home Office of the Corporation [illegible] furnishing to the Corporation any and all information [illegible] and [illegible] at Phoenix, Arizona.

The liability [illegible] Certificate [illegible] set aside into the Mortality Fund. Premiums [illegible] with [illegible] Fund [illegible] the Corporation [illegible] Premium insufficiency may be adjusted, with the written approval of the [illegible] the purpose [illegible] statement of claims and general operating expenses, to the extent [illegible] with the written consent of or at the direction of the Corporation [illegible] Fund [illegible] the Mortality Fund.

If the death of the Member occurs [illegible] the Application for this Certificate, the amount payable hereunder shall be such as the Premium [illegible] to the extent that the age of the Member was more than [illegible] the extent of the return of all Premiums paid hereon.

This Certificate [illegible] the Application [illegible] and the Application thereto, a copy of which appears hereon, shall [illegible] the entire [illegible] the Member and the Corporation.

[illegible] Benefit Corporation and operates under the Benefit Insurance Corporation Law of the State of Arizona. [illegible] and reserves all rights according to law.

[fol. 50] [File endorsement omitted]

IN THE JUSTICE'S COURT OF VENTURA TOWNSHIP

[Title omitted]

WARRANT OF ARREST (MISDEMEANOR)

The People of the State of California, to any Sheriff, Constable, Marshal or Policeman of said County of Ventura:

Complaint, upon oath, having been this day laid before me Glenn D. Corey a Justice of the Peace of said Township, by A. J. O'Lein that the offense of Violation of Section 703 (a) and Section 1642 of the Insurance Code has been committed, and accusing F. O. Robertson thereof,

You Are Therefore Commanded forthwith to arrest the above named F. O. Robertson and to bring him before me forthwith, at my office in said Township.

Witness my hand, at my office in said Township, this 1st day of September, 1944.

(Signed) Glenn D. Corey, Justice of the Peace of said Township.

[fol. 51] STATE OF CALIFORNIA,
County of Ventura, ss:

I Certify that I received the above warrant on the — day of ——, 194— and served the same by arresting the above named —— —— thereon at —— on the — day of —, 194—, and bringing him into Court, this — day of —, 1944.

(Signed) L. Howard Durley, Sheriff, Ventura Township, County of Ventura, by (Signed) Ralph Gragg, Deputy Sheriff.

[fol. 52] Western Union

Money Order Message

Ventura, Cal. Sept. 2, 1944

No. 856.

To Glen Corey Justice of the Peace

The Money Order paid you herewith is from Ethel Weber at Beverly Hills Calif. and included the following messages:

For Mr. F. O. Robertson.

Filed Sep. 2, 1944. Glenn D. Corey, Justice of the Peace.

[fol. 53] [File endorsement omitted]

IN THE JUSTICE'S COURT OF VENTURA TOWNSHIP

[Title omitted]

ORDER FOR RELEASE OF PRISONER

To the Sheriff of Ventura County:

This is to command you to release from custody O. F. Robertson, the above named defendant in the above entitled cause, for the following reasons, viz:

Cash Bail $500.00 posted for appearance 9-7-44 at 2 P. M.

Signed Glenn D. Corey, Justice of the Peace of and for Ventura Township.

Dated 9-2-44.

[fol. 54] Robert R. Weaver, Attorney at Law,
404 First National Bank Bldg.,
Central at Washington,
Telephone 3-1753

Phoenix, Arizona,
September 15, 1944.

Offiee of the Justice of the Peace, Ventura, California.

DEAR SIR:

Re: People vs. Robertson

When we were at Ventura a few days ago the above matter was set for trial on September 26th at 10 O'clock with the understanding that if a Jury were waived by September 19th, the time of the trial would be at 2 o'clock on the same date.

Since the matter involved is more a matter of law than of fact we waive the jury and ask the Court to set the case at 2 o'clock as we had tentatively agreed upon.

Would you kindly inform me whether or not this can be done so that the defendant will not be in danger of forfeiting his bond by waiting until 2 o'clock for appearance.

Yours very truly, (Signed) Robert R. Weaver.

RRW-S.

[fol. 55] IN THE JUSTICE'S COURT OF VENTURA TOWNSHIP, COUNTY OF VENTURA, STATE OF CALIFORNIA, GLENN D. COREY, JUSTICE

Criminal

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

F. O. ROBERTSON, Defendant

Charge: Section 703a, Insurance Code (2 counts).

Complaint of A. J. O'Lein; Julien G. Hathaway, Attorney for Plaintiff; Robert R. Weaver, Attorney for Defendant.

Date 1944	Proceedings

September 1 Complaint and copy filed. Warrant of Arrest issued and handed to the Sheriff's office for service. Bail set at $500.00 cash.

September 2 Cash bail in the sum of $500.00, Western Union Money Order, deposited. Defendant released. Western Union Money Order Message, filed. Message states money deposited with Western Union by Ethel Weber, Beverly Hills, California.

Later: Defendant is in Court without counsel, in the custody of Deputy Sheriff, Ralph Gragg, and says his true name is O. F. Robertson. District Attorney, M. Arthur Waite, is in Court representing the People. The said defendant is duly arraigned, the Complaint is read to him and [fol. 56] he is informed of all his legal rights. (Rights explained by the Magistrate.) Defendant takes time in which to plead and time to plead is by the Court set for September 7, 1944, at 2:00 P. M. Defendant is released on cash bail bond heretofore deposited herein.

September 7 Defendant is in Court with counsel, Robert R. Weaver, and says his true name is F. O. Robertson and the Complaint is amended to show his true name. Deputy District Attorney, Julien G. Hathaway, is in Court representing the People. Through his attorney, defendant waives time to plead and enters a plea of "not guilty", and asks for jury trial. Trial by Jury, is by the Court set for September 26, 1944, at 10:00 A. M. Defendant is released on bond heretofore deposited herein.

September 18 On stipulation of counsel herein trial by Jury is hereby set aside and the case to be tried by Court on September 26, 1944, at 2:00 P. M.

September 26 Defendant is in Court with counsel, Robert R. Weaver, Deputy District Attorney, Julien G. Hathaway, is in Court representing the People. D. L. Hossack, is in Court duly appointed reporter. A. J. O'Lein, Mrs. Vendla O'Lein, each having been first duly sworn, are examined [fol. 57] on the part of the People and are cross-examined by Mr. Weaver, in defendant's behalf. A certain postcard signed by A. J. O'Lein, is offered and admitted in evidence as People's exhibit #1; and a certain check, maker A. J. O'Lein to Fred Robertson, is offered and admitted in evidence as People's exhibit #2; and a certain receipt issued to Alvin J. O'Lein, is offered and received in evidence as People's exhibit #3; and a certain receipt issued to Vendla O'Lein, is offered and received in evidence as People's exhibit #4; and a certain application for membership of Alvin J. O'Lein, is offered and received in evidence as People's exhibit #5; and a certain application for membership of Vendla O'Lein, is offered and received in evidence as People's exhibit #6. A. J. O'Lein, is recalled and examined on the part of the People and is again cross-examined by Mr. Weaver for defendant. Kenneth F. Boraker, having been first duly sworn, is examined on the part of the People. Mr. Weaver made no cross-examination of this witness. The People rest. The said defendant having been first fully advised by the Court, declined to testify in his own behalf. The Court finds defendant guilty on both [fol. 58] counts and time to pronounce judgment is by the Court set for September 29, 1944, at 2:00 P. M.

September 29 Defendant is in Court with counsel, Robert R. Weaver. Deputy District Attorney, Julien G. Hathaway, is in Court representing the People. All parties are ready for pronouncement of judgment.

JUDGMENT

WHEREFORE, it is by the Court ordered and adjudged that the said defendant, F. O. Robertson, shall pay a fine of $200.00, being $100.00 on each count as stated in the Complaint herein; it is further ordered that the cash bail be reduced to $200.00 and $300.00 ordered by the Court to be returned to Ethel Weber, 130 S. Westgate Avenue, (Brent-

wood) Los Angeles 24, California. Done in Open Court this 29th day of September, 1944.

(Signed) Glenn D. Corey, Justice of the Peace.

Defendant files notice of Appeal, and files Statement on Appeal.

Transcript of Docket issued.

The following papers are filed with the Clerk of the Superior Court:

Complaint.
Warrant of Arrest.
Western Union Money Order Message.
Copy of Order for Release of Prisoner.
[fol. 59] Letter from Robert R. Weaver.
Notice of Appeal.
Transcript of Docket.
Certificate.
Statement on Appeal.

together with exhibits as above listed.

[fols. 60-61] Certificate

I hereby certify that the above and foregoing to be a true, full and correct transcript of the Docket as it appears on my records.

Dated this 29th day of September, 1944.

(Signed) Glenn D. Corey, Justice of the Peace, Ventura Township, County of Ventura, State of California.

[fol. 62] In the Superior Court of Ventura County

No. 27739

The People, Etc.,

vs.

F. O. Robertson

Minute Entry of Hearing—Nov. 4, 1944

The above entitled action comes regularly on at this time for hearing of the appeal of the defendant from the judgment of conviction rendered in the Justice's Court of Ventura Township, County of Ventura, State of California.

The Deputy District Attorney, Julien G. Hathaway, and the defendant with his counsel, R. R. Weaver, are present in Court.

Deputy District Attorney, Julien G. Hathaway, makes his opening statement to the Court.

It is stipulated by and between counsel for appellant and respondent that the Reporter's Transcript of Proceedings and testimony had and taken in the Justice's Court of Ventura Judicial Township on Tuesday, September 26, 1944, at 2:00 o'clock P. M., be, and hereby is received in evidence on this appeal and that the testimony therein con-
[fol. 63] tained be received in this Court as testimony and deemed to have been taken in this Court for all purposes in this cause. It is so ordered by the Court.

It is further stipulated that said cause shall stand submitted upon the filing of briefs by respective counsel; that appellant shall have 15 days within which to file opening briefs, the proponant to have 15 days within which to file answering briefs, and the appellant to have 10 days within which to file closing briefs.

Attest: a true copy of the minutes.

L. E. Hallowell, County Clerk, by (Signed) R. O. Weigle, Deputy Clerk.

[fol. 64] IN THE SUPERIOR COURT OF VENTURA COUNTY

No. 27739

THE PEOPLE, ETC.,

vs.

F. O. ROBERTSON

MINUTE ENTRY OF JUDGMENT—May 29, 1945

The appeal of the defendant, F. O. Robertson, from the Judgment of Conviction rendered in the Justice's Court of Ventura Township, County of Ventura, State of California, in the above entitled action having been submitted, pursuant to stipulation of Deputy District Attorney Julien G. Hathaway, appearing for the People of the State of California, and R. R. Weaver, counsel for the defendant, on the Reporters Transcript of Proceedings and testimony

had and taken in the Justice's Court of Ventura Township, County of Ventura, State of California, on Tuesday, the 26th day of Septembere, 1944, at 2:00 o'clock P. M. and upon briefs filed by respective counsel, and the Court having duly considered the same and being fully advised, now

Orders that the Judgment of Conviction rendered herein by the Justice's Court of Ventura Township, County of Ventura, State of California, be, and the same is hereby affirmed.

[fol. 65] Attest: a true copy of the minutes.

L. E. Hallowell, County Clerk, by (Signed) R. O. Weigle, Deputy Clerk. (Seal.)

[File endorsement omitted.]

[fol. 66] [File endorsement omitted.]

IN THE SUPERIOR COURT OF VENTURA COUNTY

No. 27739

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

F. O. ROBERTSON, Defendant and Appellant,

MEMORANDUM OF OPINION—Filed April 21, 1945

In the Justice's Court of Ventura Township the defendant was found guilty of two counts of violation of the Insurance Code of California: (1) Violation of Section 703a of the Insurance Code, and (2) violation of Section 1642 of the same Code. The case comes to the Superior Court on appeal from the judgment rendered pursuant to such conviction.

There is no dispute as to the facts involved, which may be stated from appellant's brief as follows:

> "In the case at Bar the record shows: *One*, that the First National Benefit Society had sent through the United States mails certain advertising material containing inquiry cards, to prospective purchasers. *Two*, [fol. 67] that one A. J. O'Lein forwarded to the Society

at Phoenix, through the same mail the inquiry card in evidence. *Three,* that the Society forwarded the same inquiry card to F. O. Robertson through the mail. *Four,* that an application was signed by the said O'Lein and his wife and forwarded direct to the Society through the mail. *Five,* that the application was accepted at Phoenix, Arizona, and policy mailed direct to the said O'Lein at Ventura, California, with instructions to make all payments direct to the home office at Phoenix. (Rep. Tr. Page 6-15.)"

Thus the defendant, in California acted as agent for a non-admitted insurer, without a license, and is clearly guilty of the crimes charged.

The whole ground of appeal is that the decision by the United States Supreme Court in the recent case of United States v. South-Eastern Underwriters Asso., 64 S. Ct. 1162, compels a reversal of the judgment for the reason that the State of California has no power to regulate any phase of the insurance business, if that business be interstate.

I have very carefully read the decision in question. It holds that the business of insurance is commerce, and that a Federal indictment for conspiracy to violate the Sherman Anti-Trust Act is good against demurrer. There is nothing in the case which overrules prior decisions of the Supreme Court, holding state regulation of insurance to be valid.

As Mr. Justice Black points out: "Insurance touches the home, the family, and the occupation or business of almost every person in the United States;" and on page 1089 of the reported decision it is stated:

[fol. 68] "In all cases in which the Court has relied upon the proposition that 'the business of insurance is not commerce,' its attention was focused on the validity of state statutes—the extent to which the Commerce Clause automatically deprived states of the power to regulate the insurance business. Since Congress had at no time attempted to control the insurance business, invalidation of the state statutes would practically have been equivalent to granting insurance companies engaged in interstate activities a blanket license to operate without legal restraint. As early as 1866 the insurance trade, though still in its infancy, was subject to widespread abuses. To meet the imperative

need for correction of these abuses the various state legislatures, including that of Virginia, passed regulatory legislation. Paul v. Virginia upheld one of Virginia's statutes. To uphold insurance laws of other states, including tax laws, Paul v. Virginia's generalization and reasoning have been consistently adhered to."

And on page 1091 the following language conclusively demonstrates that it was not the intention of the Supreme Court to deny to the several states the right to regulate insurance:

> "It is settled that, for Constitutional purposes, certain activities of a business may be intrastate and therefore subject to state control, while other activities of the same business may be interstate and therefore subject to federal regulation. And there is a wide range of business and other activities which, though subject to federal regulation, are so intimately related to local welfare that, in the absence of Congressional action, they may be regulated or taxed by the states. In marking out these activities the primary test applied by the Court is not the mechanical one of whether the particular activity affected by the state regulation is part of interstate commerce, but rather whether, in each case, the competing demands of the state and national interests involved can be accommodated. And the fact that particular phases of an interstate business or activity have long been regulated or taxed by states [fol. 69] has been recognized as a strong reason why, in the continued absence of conflicting Congressional action, the state regulatory and tax laws should be declared valid."

Therefore all that this important leading case holds is that the Federal law applies to interstate insurance, and that state law likewise applies to interstate insurance until the Federal government may exercise its power to legislate in that particular field.

The judgment is affirmed.

Dated this 20th day of April, 1945.

(Signed) Louis C. Drapeau, Judge of the Superior Court.

[fol. 70] IN THE SUPERIOR COURT OF VENTURA COUNTY

27739

THE PEOPLE, etc.

vs.

F. O. ROBERTSON

JUDGMENT—May 29, 1945

The appeal of the defendant, F. O. Robertson, from the Judgment of Conviction rendered in the Justice's Court of Ventura Township, County of Ventura, State of California, in the above entitled action having been submitted, pursuant to stipulation of Deputy District Attorney Julien G. Hathaway, appearing for the People of the State of California, and R. R. Weaver, counsel for the defendant, on the Reporter's Transcript of Proceedings and testimony had and taken in the Justice's Court of Ventura Township, County of Ventura, State of California, on Tuesday, the 26th day of September, 1944, at 2:00 o'clock P. M., and upon briefs filed by respective counsel, and the Court having duly considered the same and being fully advised, now

Orders that the Judgment of Conviction rendered herein by the Justice's Court of Ventura Township, County of Ventura, State of California, be, and the same is hereby affirmed.

Attest: a true copy of the minutes.

L. E. Hallowell, County Clerk, (Signed) by R. O. Weigle, Deputy Clerk. (Seal.)

[File endorsement omitted.]

[fol. 71] [File endorsement omitted]

IN THE SUPERIOR COURT OF VENTURA COUNTY

[Title omitted]

PETITION FOR ORDER ALLOWING APPEAL—Filed May 31, 1945

To the Honorable Louis C. Drapeau, Judge of the Superior Court of the State of California in and for the County of Ventura; your petitioner respectfully shows:

I

Petitioner is the appellant in the above entitled cause.

II

That the above-named respondent, the People of the State of California, brought a misdemeanor action against the appellant for violation of Section 703 (a) and Section 1642 of the Insurance Code of the State of California; that the said action was tried in the justice court of Ventura Township, County of Ventura, State of California, on the 26th day of September, 1944; that the said appellant was found guilty of the said charge.

III

An appeal from the said judgment was taken to the above entitled court, the Superior Court of the State of California, in and for the County of Ventura, and that the said judg-[fol. 72] ment of the said justice court was affirmed by the said Superior Court on the 29th day of May, 1945.

IV

In the said cause there is drawn in question the validity of a statute of the State of California on the ground of its being repugnant to the Constitution and laws of the United States, and the decision is in favor of its validity in that the said Sections 703 (a) of the Insurance Code of the State of California as applied to the acts of the appellant herein *are* in violation of the Commerce Clause of the Constitution of the United States and to the Fourteenth Amendment thereto.

Wherefore, petitioner prays for the allowance of an appeal from said Superior Court of the State of California,

to the Supreme Court of the United States, in order that the decision of the said Superior Court of the State of California may be examined or reversed, and also prays that a transcript of the record, proceedings and papers in this case, duly authenticated by the clerk of the said Superior Court of the State of California, may be sent to the Supreme Court of the United States, as provided by law; and petitioner prays that the court set the amount of any cost bond or deposit for costs herein.

Petitioner further prays that pending the disposition of this case by the said Supreme Court of the United States, he may be admitted to bail upon giving bond according to [fol. 73] law in such sum as the Court may deem proper, the said bond to be approved as this Court may direct.

Dated this 23rd day of May, 1945.

(Signed) Robert R. Weaver, Attorney for Petitioner.

Service of the foregoing Petition for Order Allowing Appeal and the receipt of a copy thereof are hereby acknowledged this 29th day of May, 1945.

M. Arthur Waite, (Signed) by Donald D. Roff, Attorneys for Plaintiff and Respondent.

[fol. 74] [File endorsement omitted]

IN THE SUPERIOR COURT OF VENTURA COUNTY

[Title omitted]

ASSIGNMENT OF ERRORS ON APPEAL—Filed May 31, 1945

Comes now F. O. Robertson by Robert R. Weaver, his attorney, having filed with the above entitled Court his Petition for Appeal and the Court having granted the same and having filed a written Order allowing said Appeal, now makes and files herewith this, his Assignment of Errors, and says that in the trial of the said case in the record, proceedings, rulings, and judgment aforesaid manifest error has intervened to his prejudice, namely:

I

The Judgment Is Contrary to The Law and to the Constitution of the United States of America.

a. The said Judgment has found the said F. O. Robertson guilty of an offense of failing to obtain a li-

cense to assist in a transaction in Interstate Commerce.

b. The law under which the said judgment was rendered is contrary to the Constitution of the United States, in that it imposes an undue burden on Interstate [fol. 75] Commerce.

c. The law under which the said Judgment was rendered is contrary to the law and the Constitution of the United States, in that it constitutes a prohibition against the Defendant engaging in Interstate transactions.

d. The said Judgment is contrary to the law and evidence in that the defendant has been adjudged guilty of an offense for assisting a nonadmitted insurer to complete an interstate transaction insuring the life of one who could not obtain life insurance from an admitted insurer and which even surplus line brokers could not write because the premium charge was less than that of an admitted insurer.

II

The Judgment Is Contrary to the Evidence in Each Particular in That it Is Contrary to the Law and in Conflict *to* the Constitution of the United States of America.

a. The Judgment of the said Court is contrary to the evidence in that the said evidence shows that the laws of the State of California under which Appellant was prosecuted are in conflict with Art. 1, Section 8, para. 3, known as the commerce Clause of the Constitution of the United States, and the Fourteenth Amendment to the Constitution.

[fols. 76-101] III

The Said Superior Court Erred in Holding That the Said Sections of the California Insurance Code (703a and 1642), As Applied to the Acts of the Appellant Complained of Herein, Were Not in Conflict With the Laws or Constitution of the United States and in Holding in Favor of Their Validity.

Wherefore, Appellant prays that the said judgment of the Superior Court of the State of California in and for

the County of Ventura be reversed and that the said Court be ordered to enter judgment in favor of the Appellant.

Dated this 23 day of May, 1945.

(Signed) Robert R. Weaver, Attorney for Defendant and Appellant.

Service of the foregoing Assignment of Errors on Appeal and the receipt of a copy thereof are hereby acknowledged this 29th day of May, 1945.

M. Arthur Waite, (Signed) by Donald D. Roff, Attorneys for Plaintiff and Respondent.

[fol. 102] [File endorsement omitted]

IN THE SUPERIOR COURT OF VENTURA COUNTY

[Title omitted]

ORDER ALLOWING APPEAL—Filed May 31, 1945

The petition of the Defendant, F. O. Robertson, for an appeal in the above cause to the Supreme Court of the United States from the Superior Court of the State of California in and for the County of Ventura, and the Assignment of Errors filed therewith and the record of said cause having been considered, it is

Ordered that an appeal be and is allowed to the Supreme Court of the United States from the Superior Court of the State of California, as prayed in said Petition, and that the clerk of the said Superior Court of the State of California shall prepare and certify a Transcript of the Record and proceedings in the above cause and transmit the same to the Supreme Court of the United States within 30 days from the date hereof.

The said Appellant is hereby admitted to bail upon giving cash bond in the sum of $200.00, which said sum has [fol. 103] been deposited by the said Appellant and the same is hereby approved by the Court.

Dated this 29th day of May, 1945.

(Signed) Louis C. Drapeau, Judge of the above entitled Superior Court.

Service of the foregoing Order Allowing Appeal and the receipt of a copy thereof are hereby acknowledged this 29th day of May, 1945.

(Signed) M. Arthur Waite, by Donald D. Roff, Attorneys for Plaintiff and Defendant.

[fols. 104-107] Citation in usual form showing service on M. Arthur Waite, filed June 8, 1945, omitted in printing.

[fol. 108] [File endorsement omitted]

IN THE SUPERIOR COURT OF VENTURA COUNTY

[Title omitted]

PRAECIPE FOR THE RECORD—Filed May 31, 1945.

To the Clerk:

Please prepare a transcript of the record in the above entitled cause in the matter of the appeal therein to the Supreme Court of the United States and include in said transcript in the order given below, the following:

I

Complaint (The People of the State of California vs. F. O. Robertson, No. 8133).

II

Notice of Appeal, filed September 29, 1944.

III

Statement on Appeal, filed September 29, 1944.

IV

Reporter's Transcript of Proceedings in Justice's Court of Ventura Township, introduced in evidence herein.

[fol. 109]

V

The entire record transferred to the Superior Court from the said Justice's Court.

VI

Minutes of the Superior Court.

VII

Memorandum of Opinion, filed April 21, 1945.

VIII

Judgment of the Superior Court.

IX

Petition for Order Allowing Appeal.

X

Assignment of Errors on Appeal.

XI

Jurisdictional Statement.

XII

Order Allowing Appeal.

XIII

Citation.

XIV

Statement Directing Attention to the Provisions of Paragraph three, Rule Twelve of the United States Supreme Court Rules.

XV

This Praecipe for the Record.

[fols. 110-113] Dated this 29th day of May, 1945.

(Signed) Robert R. Weaver, Attorney for Appellant.

Service of the Foregoing Praecipe for transcript of the record and the receipt of a copy thereof are hereby acknowledged this 29th day of May, 1945.

(Signed) M. Arthur Waite, by Donald D. Roff, Attorneys for Plaintiff and Respondent.

[fol. 114] In the Superior Court of Ventura County

Order Extending Time—Filed June 21, 1945

It Is Hereby Ordered, good cause having been shown, that the time within which the above entitled cause may be docketed and the record thereof filed is hereby extended to and including the 30th day of July, 1945.

Dated this 20th day of June, 1945.

Wm. D. Dehy, Judge of the above entitled court.

[File endorsement omitted.]

[fol. 115] In the Supreme Court of the United States

Statement of Points to Be Relied Upon on Appeal—Filed July 28, 1945

Comes now F. O. Robertson, appellant in the above entitled cause and states that the points upon which he intends to rely on appeal in this case are as follows:

I

The laws under which the said appellant was tried and convicted are contrary to and in conflict with Art. 1, Sec. 8, Par. 3 of the Constitution of the United States, known as the Commerce Clause, and in violation of the Fourteenth Amendment to the Constitution.

II

The state cannot require the consent of a person or corporation to engage in interstate commerce with its citizens.

III

The mere solicitation of an order for shipment of an article into a state direct to the party giving the order is a transaction in interstate commerce and the state cannot require its consent therefor nor prohibit it.

IV

The law of a state which attempts to regulate the activities of a corporation or person engaged in interstate com-

merce in another state is in violation of the commerce clause [fol. 116] of the Constitution.

V

The law of a state which prohibits transactions in interstate commerce is in violation of the Commerce Clause of the Constitution.

VI

The law of a state which discriminates between domestic and foreign dealers and corporations either by way of regulation or taxation is in violation of the Commerce Clause of the Constitution and in violation of the Fourteenth Amendment thereto.

VII

The mere solicitation of an order for insurance for a nonadmitted insurer in a state does not amount to "doing business" within the state.

VIII

The acts of the defendant for which he was convicted, were performed in connection with interstate transactions which constitute interstate commerce.

Dated this 12 day of July, 1945.

Allan K. Perry, Phoenix, Arizona, Counsel for Appellant.

Robert R. Weavers, Phoenix, Arizona, Of Counsel.

[fols. 117-118] Affidavit of service omitted in printing.

[fol. 119] In the Supreme Court of the United States

Designation of Parts of the Record Considered Necessary by the Appellant—Filed July 28, 1945

Comes now the above named appellant and respectfully designates the following portions of the record as necessary for consideration of said appeal:

I

Complaint (The People of the State of California vs. F. O. Robertson. No. 8133).

II

Notice of Appeal, filed September 29, 1944.

III

Statement on Appeal, filed September 29, 1944.

IV

Reporter's Transcript of Proceedings in Justice's Court of Ventura Township, introduced in evidence herein.

V

The entire record transferred to the Superior Court from the said Justice's Court.

VI

Minutes of the Superior Court.

VII

Memorandum of Opinion, filed April 21, 1945.

[fol. 120] VIII

Judgment of the Superior Court.

IX

Petition for Order Allowing Appeal.

X

Assignment of Errors on Appeal.

XI

Jurisdictional Statement.

XII

Order Allowing Appeal.

XIII

Citation.

XIV

Statement Directing Attention to the Provisions of Paragraph Three, Rule Twelve of the United States Supreme Court Rules.

XV

Praecipe for the Record.

XVI

Petition for Order Enlarging Time.

XVII

Order Enlarging Time.

XVIII

Statement of Points To Be Relied Upon on Appeal, filed herein.

XIX

This Designation of Parts of the Record Considered Necessary by the Appellant.

Dated this 12 day of July, 1945.

Allan K. Perry, Phoenix, Arizona, Counsel for Appellant.

Robert R. Weaver, Phoenix, Arizona, of Counsel.

[fol. 121] Affidavit of service omitted in printing.

[fol. 122] [File endorsement omitted.]

[fol. 123] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—October 8, 1945

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Jackson and Mr. Justice Burton took no part in the consideration or decision of this question.

Endorsed on cover: File No. 49,977. California, Superior Court in and for the County of Ventura. Term No. 274. F. O. Robertson, Appellant, vs. The People of the State of California. Filed July 28, 1945. Term No. 274, O. T. 1945.

FILE COPY

Office - Supreme Court, U. S.
FILED
JUL 28 1945
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 274

F. O. ROBERTSON,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF VENTURA

STATEMENT AS TO JURISDICTION

ALLEN K. PERRY,
ROBERT R. WEAVER,
Counsel for Appellant.

INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Statutory provisions believed to sustain jurisdiction	1
Statutes of the state the validity of which is involved	2
Date of judgment or decree sought to be reviewed and the date upon which the application for appeal was presented	2
Nature of the case	3
The law of the State of California making the above-entitled court the highest court in the State which could render decision herein	5
Grounds upon which it is contended that the questions involved are substantial	6
Supplement "A"—Statement on appeal in Justice Court	12
Supplement "B"—Memorandum opinion of the Superior Court	14

Table of Cases Cited

Alpha Portland Cement Co. v. *Massachusetts*, 268 U. S. 203	11
Angle v. *O'Malley*, 219 U. S. 128	11
Buck v. *Kuykendall*, 267 U. S. 307, 45 Sup. Ct. 324, 69 L. Ed. 623, 38 A.L.R. 286	11
California v. *Thompson*, 313 U. S. 109, 61 Sup. Ct. 930	9
Carlson v. *California*, 310 U. S. 106	5
Crenshaw v. *Arkansas*, 227 U. S. 389	11
Detweiler, et al. v. *Welch*, 46 Fed. (2d) 75, 73 A.L.R. 1440	11
Edwards v. *California*, 314 U. S. 160	5
Fidelity & Deposit Co. of Maryland v. *Tafoya*, 270 U. S. 246	10
Hall v. *Geiger Jones Co.*, 242 U. S. 539	11
Hatch v. *Reardon*, 204 U. S. 152	11

Hegman v. *Southern Railroad*, 203 U. S. 271, 51 L. Ed. 178, 27 Sup. Ct. 104 10
Kelly v. *Washington*, 302 U. S. 1, 58 Sup. Ct. 87, 82 L. Ed. 3 9
Parker v. *Brown*, 317 U. S. 341, 63 Sup. Ct. 307, 87 L. Ed. 315 9
Paul v. *Virginia*, 8 Wall. 168 10
Sears v. *Superior Court in and for Calaveras County*, 24 Pac. (2d) 842 6
Sonneborn v. *Cureton*, 262 U. S. 506, 43 Sup. Ct. 643, 67 L. Ed. 1095 11
Unemployment Reserve Commission v. *Francis H. Assn.*, 137 Pac. (2d) 64 4
United States v. *Southeastern Underwriters Assn.*, 64 Sup. Ct. 1162 4,6,9
Western Union Telegraph Co. v. *Kansas*, 216 U. S. 1 10

TEXTS CITED

2 Cal. Jurs., p. 132, para. 16 4
1 Cal. Jurs. Suppl., p. 284-5, para. 16 4

CONSTITUTIONAL AND STATUTORY PROVISIONS

Art. 1, Sec. 8, para. 3 (Commerce Clause) of the United States Constitution 2
Fourteenth Amendment of the United States Constitution 10
United States Statute of January 31, 1928, C. 14, Sec. 1, 45 Stat. 54, 28 U.S.C.A., Sec. 344 and 861 (a) 1
Art. 6, Sec. 4 of the California Constitution 5
Art. 6, Sec. 4b of the California Constitution 5
Sec. 963, California Code of Civil Procedure 4
Sec. 703a, California Insurance Code 2,8
Sec. 1642, California Insurance Code 2
Sec. 10818, California Insurance Code 6
Ch. 6, Sec. 1760 to 1779, California Insurance Code 8

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF VENTURA

No. 27739

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

vs.

F. O. ROBERTSON
Defendant and Appellant

JURISDICTIONAL STATEMENT

In compliance with Rule 12 of the Revised Rules of the Supreme Court of the United States, appellant submits herewith his statement showing the basis of the jurisdiction of the Supreme Court to entertain the appeal in this cause:

A

The jurisdiction of the Supreme Court to review by direct appeal the judgment herein complained of is conferred by the statute of January 31, 1928, C. 14, Sec. 1, 45 Stat. 54, 28 U. S. C. A., Sec. 344 and 861 (a).

B

The statute of the State of California which it is claimed has drawn in question the provisions of the Constitution

or laws of the United States is Section 703 (a) of the Insurance Code of the State of California, which provides as follows:

> "703. Except when performed by a surplus line broker, the following acts are misdemeanors when done in this State:
>
> (a) Acting as agent for a nonadmitted insurer in the transaction of insurance business in this State";

and Section 1642 of the Insurance Code of the State of California, which provides as follows:

> "1642. A person shall not act as an insurance agent, broker, or solicitor until a license is obtained from the Commissioner, authorizing such person so to act."

The Sections of the Constitution which it is claimed the enforcement of the said Sections have violated are Art. 1, Section 8, para. 3, known as the Commerce Clause of the Constitution of the United States, and the Fourteenth Amendment to the Constitution.

C

The judgment complained of entered herein in the above entitled Superior Court of the State of California in and for the County of Ventura on the 29th day of May, 1945, and application for appeal is presented on the 29th day of May, 1945.

D

On or about the first day of September, 1944, a complaint was filed in the justice court of Ventura Township, County of Ventura, State of California, charging the defendant and appellant, F. O. Robertson, with a violation of Section 703(a) of the Insurance Code of the State of California in the first count, and Section 1642 of the said Code in the second count.

The case was tried on September 26, 1944. The defendant was found guilty on both counts, and by stipulation on September 29, 1944 was set for the date of pronouncement of judgment. Judgment was pronounced on said date and appeal was taken to the Superior Court of the State of California in and for the County of Ventura. The case was set for hearing in the said Superior Court in Ventura on the 4th day of November, 1944.

The question as to the conflict of the above-named Sections of the California Insurance Code as applied to defendant being contrary to the Constitution and Laws of the United States was first raised by argument at the close of the trial in the justice court.

After the pronouncement of judgment and upon the filing of a notice of appeal in the said justice court, the defendant, F. O. Robertson, also filed a Statement on Appeal, setting forth his grounds and points upon which he relied in the said appeal, stating that the evidence was insufficient to justify the judgment of the court for the reason that the act of the defendant was one of a series of transactions constituting interstate commerce. Copy of said Statement is hereto attached marked *Supplement "A."* The Reporter's Transcript of the proceedings in the justice court were introduced into evidence and by stipulation made the evidence in the Superior Court. Extensive briefs were filed setting forth the contention of the defendant that the acts complained of by the People constituted a transaction in interstate commerce, and that the said Sections as applied thereto were an undue burden on interstate commerce and in fact a prohibition thereof. On the 20th day of April, 1945, the Honorable Louis C. Drapeau, Judge of this, the said Superior Court, signed a Memorandum of Opinion in the said case upholding the conviction in the justice court, which opinion held in effect that although insurance business transacted across state

lines was interstate commerce under the decision in *United States* v. *Southeastern Underwriters Assn.*, 64 S. Ct. 1162, it was nevertheless subject to the regulations imposed by the above-mentioned Sections of the California Insurance Code, a copy of which Memorandum of Opinion, filed in the office of the clerk on April 21, 1945, is hereto attached, marked *Supplement "B."*

E

The Superior Court of the County of Ventura, State of California, has rendered a decision herein and it is the highest court in that state which could render such decision.

Cases in Which Appeal May Be Taken from Superior Court

Sec. 963, Calif. Code of Civil Procedure.

"An appeal may be taken from the Superior Court in the following cases:

"I. From a final judgment entered in an action of special proceeding commenced in the Superior Court or brought into the Superior Court from another court."

2 Cal. Jurs., p. 132, para. 16.
1 Cal. Jurs. Suppl., p. 284-5, para. 16.

"The bringing of an action into the Superior Court by appeal is not bringing it into the Superior Court within the meaning of Section 963, Cal. C. C. P. unless the Superior Court had original jurisdiction of the matter."

Unemployment Reserve Commission v. *Francis H. Assn.*, 137 P. (2d) 64.

"If the municipal Court had jurisdiction herein then the determination of the Appellate Department of the Superior Court is final and the case is not appealable (Calif.

Constitution, Art. 6, Sec. 5). If a court had original jurisdiction it did not exercise it."

Art. 6, Sec. 4, Calif. Constitution.

"The Supreme Court shall have appellate jurisdiction on appeal from the Superior Court in all cases in equity, except such as arise in municipal or justice court; also in all cases at law which involve the title or possession of real estate or the legality of a tax imposed, assessment, toll, or municipal fine. Also in such probate matters, etc."

Art. 6, Sec. 4 (b), Calif. Constitution.

"The District Court of Appeals shall have Appellate jurisdiction on appeals from the Superior Court (except in cases where appellate jurisdiction is given the Supreme Court), in all cases at law in which the Superior Courts are given original jurisdiction; also in all cases of forcible entry and detainer (except such as arise in a municipal or justice or other inferior courts) * * * also on questions of law alone in all criminal cases prosecuted by indictment or information except where the judgment of death has been rendered."

Edwards v. *California*, 314 U. S. 160.

"Appeal from a judgment of the Superior Court of California which affirmed the conviction of Edwards under a California statute declaring it to be a misdemeanor for any person to bring, or assist in bringing, into the State any non-resident of the State, knowing him to be an indigent person. The court below was the highest court to which an appeal could be taken under the laws of California. The case was argued here, and reargument was ordered at the 1940 Term, 313 U. S. 545."

Carlson v. *California*, 310 U. S. 106.

Involving city ordinance prohibiting picketing.

Sears v. *Superior Court in and for Calaveras County*, 24 Pac. (2d) 842-843.

"Where the right of appeal existed the writ of certiorari will not lie. In both the Roberts and the Hood cases, supra, the writs of certiorari were denied, notwithstanding the fact that judgments of the inferior court had been affirmed on appeal to the superior court from which last-mentioned court there was no appeal."

F

The grounds upon which appellant contends that the questions involved are substantial are as follows:

1. The business of insurance is commerce and when transacted across state lines, is interstate commerce.

United States v. *Southeastern Underwriters Assn.*, 64 S. Ct. 1162.

2. The Sections of the California Insurance Code cited forbid the defendant from assisting in such a transaction as that described in the Court's Memorandum of Opinion, attached hereto, unless the insurer be admitted to write business in the State of California.

3. This is not only a requirement that the consent of the State must first be obtained before appellant or anyone could assist an insurer to complete an interstate transaction within the State of California, but in view of Section 10818 of the same Code, are an absolute prohibition against the defendant assisting in any transaction for the insurer involved herein or any similar insurer under any circumstances. The said Section reads as follows:

"10818. On and after January 1, 1940, no new insurer may be organized or admitted to operate under this chapter. Nothing herein contained shall prohibit

an insurer theretofore existing under or by virtue of this chapter from transforming to an insurer operating under the provisions of Chapter 9a of this part nor shall anything herein contained prohibit an association now operating under Chapter 8 of this part from transforming to an insurer operating under this chapter at times and in the manner provided in Chapter 8. Any corporation formed pursuant to section 10815, which, prior to January 1, 1940, exhibits proof satisfactory to the commissioner that it has procured one hundred subscribers or applicants who have each paid the required initial premium, and which also deposits with the commissioner on or before January 1, 1940, the sum of $1,000 as a payment on its statutory deposit, may be admitted on completion of its organization and statutory deposit on or before July 1, 1940."

4. An important and serious question is involved in this transaction. The Reporter's Transcript shows that the Witness O'Lein had had trouble on account of his age in obtaining any insurance at all in the State of California (R. T., P. 13, L. 18-21), and that he had heard about the insurer over the radio and seen literature about it as follows (R. T., P. 13, L. 23-24):

"Q. Mr. O'Lein, did you say you have had some trouble in getting insurance? A. At my age a fellow usually does.

"Q. And that is the reason that you applied to this particular company for a policy? A. That is the reason I became interested in that policy. I think I had heard something about that policy over the radio and seen literature, and it was just handy."

Having received an inquiry card, he mailed it to the insurer involved, in the State of Arizona, the same card being returned by the said insurer to the appellant herein. The Appellant called upon the inquirer, and an application was signed and forwarded direct to the insurer, and the trans-

action completed approximately as set out in the Court's Memorandum of Opinion attached hereto.

Although the Witness O'Lein had had difficulty in obtaining insurance in the State of California and was desirous of obtaining it, and although he had heard of the company which issued the policy in question to him by radio and had seen its literature and had inquired of the company in regard to its policies, he was prohibited by the above California law from obtaining such insurance for the reason that the law under which the Appellant was prosecuted and convicted—Sections 703(a) and Section 1642 of the California Insurance Code—prohibits a member of a foreign insurer or any person in the State of California from assisting in any such interstate transaction except in the case of a surplus line broker, which broker, under Chapter Six, Sections 1760 to 1779 of the said insurance code, must obtain a license, must pay a discriminatory three per cent tax, must not write the business in a non-admitted insurer, unless there is no admitted insurer in which the risk can be written, or he must not write it for a less premium than it would be written by any company admitted to do business in the State of California. Furthermore the company with whom this risk was placed could not, under the law, be admitted in the State of California, Section 10818, California Insurance Code, *supra*. The California law is not merely one regulating the character and responsibility of an agent but absolutely prohibits such an agent from writing or assisting the company with which this risk was placed from doing business, either interstate or intrastate in the State of California.

Certainly a law which prohibits interstate commerce at least places a burden upon it.

It has been the contention of the State in this matter and the holding of the Court in the Memorandum of Opinion, *Supplement "B"* attached hereto, that the decision of

the Supreme Court in *United States* v. *Southeastern Underwriters Association*, 64 S. Ct. 1162, does not in any manner affect state regulation of insurance companies, but that under that case, the business of insurance is held to be commerce when transacted across state lines only when a *Federal* law is being interpreted, and that the same business is not commerce and hence not interstate commerce when a *state* law is being construed. The said decision by the United States Supreme Court, however, does not distinguish between two different laws applied to a business but between two different phases of the said business which may be interstate in one phase and intrastate in another. The trial court has quoted the said decision on page 1089 of the said report in part as follows:

> "• • • To uphold insurance laws of other states, including tax laws, Paul v. Virginia's generalization and reasoning have been consistently adhered to."

It is not the contention of Appellant that the State would have no right to regulate insurance business. We agree that the decisions in a limited number of cases hold that, where the regulation is purely local in its application, the states may regulate interstate commerce.

Kelly v. *Washington*, 302 U. S. 1, 58 S. Ct. 87, 82 L. Ed. 3;

Parker v. *Brown*, 317 U. S. 341, 63 S. Ct. 307, 87 L. Ed. 315;

California v. *Thompson*, 313 U. S. 109, 61 S. Ct. 930, 85 L. Ed. 1219.

These decisions, however, have been applied in cases where the state law affects only commerce coming into the regulating state or require acts to be done within the regulating state, and which do not have an extraterritorial effect. The law under which Appellant was prosecuted,

which prohibits him from assisting a non-admitted insurer in transacting business with a California resident, coupled with the requirements for such admission reach out across the state lines and regulate the insurer in the state of its organization and in every state in which it transacts business.

The decision, generalization and reasoning of the old case of *Paul* v. *Virginia*, 8 Wall. 168, referred to in *United States* v. *Southeastern Underwriters Association*, *supra*, has not only been consistently, but universally, followed in order to uphold the broad structure of state regulation in its entirety, and unless this old case is to remain the law of the land to its fullest import, then state regulation must now be re-examined. Since that which is being regulated is now interstate commerce, it is limited by the provisions of the United States Constitution, the Commerce Clause, the Equality clause and the Fourteenth Amendment thereto. The law of the State of California has prohibited Appellant from assisting in a transaction constituting interstate commerce between a company, of which he was a member, and a resident of California seeking insurance outside of the State, having failed to obtain it therein. The conditions under which Appellant could complete an interstate transaction for the company he represented are that it conform its corporate structure in the state of its existence, and its entire method of doing business in every state in which it transacts business to the regulatory provisions of the State of California. Such requirement is in conflict with the above provisions of the United States Constitution and within the jurisdiction of this Court.

Western Union Telegraph Co. v. *Kans.*, 216 U. S. 1 (27);
Fidelity & Deposit Co. of Maryland v. *Tafoya*, 270 U. S. 246;
Hegman v. *Southern Railroad*, 203 U. S. 271, 51 L. Ed. 178, 27 S. Ct. 104;

Detweiler et al. v. *Welch, Commissioner of Agriculture, State of Idaho*, 46 Fed. (2d) 75, 73 A. L. R. 1440;
Sonneborn Bros. v. *Cureton*, Tex. 43 S. Ct. 643, 262 U. S. 506, 67 L. Ed. 1095;
Crenshaw v. *Arkansas*, 227 U. S. 389;
Alpha Portland Cement Co. v. *Commonwealth of Mass.*, 268 U. S. 203;
Hall v. *Geiger Jones Company*, 242 U. S. 539;
Hatch v. *Reardon*, 204 U. S. 152;
Angle v. *O'Mally*, 219 U. S. 128;
Buck v. *Kuykendall, Director of Public Works of the State of Washington*, 267 U. S. 307, 45 S. Ct. 324, 69 L. Ed. 623, 38 A. L. R. 286.

We believe it is unnecessary to further cite the multitude of cases decided by the Supreme Court of the United States which hold unconstitutional state statutes requiring that a license must be obtained for the purpose of engaging in interstate commerce with citizens of the regulating state or where the regulating statute is extraterritorial in its effect.

It is therefore respectfully submitted that the Supreme Court of the United States has jurisdiction of this appeal and that the same should be reviewed by the said Court and decision rendered therein.

Dated this 23rd day of May, 1945.

ALLEN K. PERRY,
ROBERT R. WEAVER,
Attorneys for Appellant.

SUPPLEMENT A

Robert R. Weaver, 448 South Hill Street, Los Angeles (13), California, Attorney for Defendant.

IN THE JUSTICE'S COURT OF VENTURA TOWNSHIP, COUNTY OF VENTURA, STATE OF CALIFORNIA.

No. 8133

THE PEOPLE OF THE STATE OF CALIFORNIA, *Plaintiff*,

vs.

F. O. ROBERTSON, *Defendant*

Statement on Appeal

To the Honorable Glen D. Corey, Justice of the above entitled Court and to Arthur M. Waite, Esq., District Attorney of Ventura County, State of California:

Whereas, the defendant, F. O. Robertson, having on the 29th day of September, 1944, duly taken an appeal from the judgment therein entered in the said above named Justice's Court of Ventura Township for the County of Ventura, State of California on the said 29th day of September, 1944,

You and each of you are hereby notified that said defendant, F. O. Robertson, in the above entitled cause now presents this, his statement of grounds of appeal and points upon which he relies upon appeal from the above entitled court to the Superior Court of the State of California in and for the County of Ventura, as follows:

I

That the evidence taken and heard by the court in said cause is insufficient to justify the judgment in that it discloses that all of the actions of the defendant consisted of a series of events constituting transactions in interstate commerce and, therefore, were not subject to prosecution under the laws of the State of California.

II.

That the judgment is contrary to law.

III

That the judgment is contrary to evidence.

IV

That the judgment is contrary to the law and the evidence.

V

That the court erred in its decisions of matters of questions of law arising during the course of the trial.

VI

That the complaint on which this action is predicated fails to state a public offense in that it appears on the face thereof that the acts of the defendant complained of were, if true, done by him in accordance with the provisions of the Fourteenth Amendment to the Constitution of the United States and the laws of the United States pertaining to the transactions of interstate commerce.

VII

That the court was without jurisdiction to entertain this proceeding for the reason that it appears on the face of the complaint that the acts of the defendant complained of were those pertaining to transactions in interstate commerce.

VIII

That Sections 703(a) and 1642 of the Insurance Code of the State of California are unconstitutional and in violation of and contrary to the commerce clause of the constitution of the United States and the Fourteenth Amendment thereof.

WHEREFORE, ~~Defendant prays~~ that the court allow and settle the above as and for his statement on appeal.

ROBERT R. WEAVER,
Attorney for Defendant.

SUPPLEMENT B

Endorsed: Filed April 21, 1945. L. E. Hollowell, Clerk, by R. O. Weigle, Deputy Clerk.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF VENTURA

No. 27739

THE PEOPLE OF THE STATE OF CALIFORNIA, *Plaintiff and Respondent,*

vs.

F. O. ROBERTSON, *Defendant and Appellant*

Memorandum of Opinion

In the Justice's Court of Ventura Township the defendant was found guilty of two counts of violation of the Insurance Code of California: (1) Violation of Section 703 (a) of the Insurance Code, and (2) violation of Section 1642 of the same Code. The case comes to the Superior Court on appeal from the judgment rendered pursuant to such conviction.

There is no dispute as to the facts involved, which may be stated from appellant's brief as follows:

> "In the case at Bar the record shows: *One*, that the First National Benefit Society had sent through the United States mails certain advertising material containing inquire cards, to prospective purchasers. *Two*, that one A. J. O'Lein forwarded to the Society at Phoenix, through the same mail the inquiry card in evidence. *Three*, that the Society forwarded the same inquiry card to F. O. Robertson through the mail. *Four*, that an application was sigued by the said O'Lein and his wife and forwarded direct to the Society through the mail. *Five*, that the application was accepted at Phoenix, Arizona, and policy mailed direct to the said O'Lein at Ventura, California, with instructions to make all payments direct to the home office at Phoenix. (Rep. Tr. Page 6-15.)"

Thus the defendant, in California acted as agent for a non-admitted insurer, without a license, and is clearly guilty of the crimes charged.

The whole ground of appeal is that the decision by the United States Supreme Court in the recent case of *United States* v. *South-Eastern Underwriters Asso.*, 64 S. Ct. 1162, compels a reversal of the judgment for the reason that the State of California has no power to regulate any phase of the insurance business, if that business be interstate.

I have very carefully read the decision in question. It holds that the business of insurance is commerce, and that a Federal indictment for conspiracy to violate the Sherman Anti-Trust Act is good against demurrer. There is nothing in the case which overrules prior decisions of the Supreme Court, holding state regulation of insurance to be valid.

As Mr. Justice Black points out: "Insurance touches the home, the family, and the occupation or business of almost every person in the United States"; and on page 1089 of the reported decision it is stated:

> "In all cases in which the Court has relied upon the proposition that 'the business of insurance is not commerce,' its attention was focused on the validity of state statutes—the extent to which the Commerce Clause automatically deprived states of the power to regulate the insurance business. Since Congress had at no time attempted to control the insurance business, invalidation of the state statutes would practically have been equivalent to granting insurance companies engaged in interstate activities a blanket license to operate without legal restraint. As early as 1866 the insurance trade, though still in its infancy, was subject to widespread abuses. To meet the imperative need for correction of these abuses the various state legislatures, including that of Virginia, passed regulatory legislation. Paul v. Virginia upheld one of Virginia's statutes. To uphold insurance laws of other states, including tax laws, Paul v. Virginia's generalization and reasoning have been consistently adhered to."

And on page 1091 the following language conclusively demonstrates that it was not the intention of the Supreme Court to deny to the several states the right to regulate insurance:

> "It is settled that, for Constitutional purposes, certain activities of a business may be intrastate and therefore subject to state control, while other activities of the same business may be interstate and therefore subject to federal regulation. And there is a wide range of business and other activities which, though subject to federal regulation, are so intimately related to local welfare that, in the absence of Congressional action, they may be regulated or taxed by the states. In marking out these activities the primary test applied by the Court is not the mechanical one of whether the particular activity affected by the state regulation is part of interstate commerce, but rather whether, in each case, the competing demands of the state and national interests involved can be accommodated. And the fact that particular phases of an interstate business or activity have long been regulated or taxed by states has been recognized as a strong reason why, in the continued absence of conflicting Congressional action, the state regulatory and tax laws should be declared valid."

Therefore all that this important leading case holds is that the Federal law applies to interstate insurance, and that state law likewise applies to interstate insurance until the Federal government may exercise its power to legislate in that particular field.

The judgment is affirmed.

Dated this 20th day of April, 1945.

LOUIS C. DRAPEAU,
Judge of the Superior Court.

Service of the foregoing Jurisdictional Statement and the receipt of a copy thereof are hereby acknowledged this 29th day of May, 1945.

(Signed) M. ARTHUR WAITE,
By DONALD D. ROFF,
Attorneys for Plaintiff and Respondent.

SUBJECT INDEX.

	PAGE
Statement of grounds upon which jurisdiction is invoked	1
Statement of the case	6
Specification of errors	8
Summary of argument	10
Argument	12
Conclusion	36
Excerpts from California Insurance Code	App. p. 1

TABLE OF AUTHORITIES CITED.

CASES.	PAGE
Allger v. Louisiana, 165 U. S. 580, 41 L. Ed. 832, 17 S. Ct. 427	33
Alpha Portland Cement Co. v. Commonwealth of Mass., 268 U. S. 203, 45 S. Ct. 477, 69 L. Ed. 917	24
Association of Army and Navy Stores v. W. H. Bruen and Co., 229 N. W. 580, 179 Minn. 457	26
Atlantic Refining Co. v. Virginia, 302 U. S. 22, 82 L. Ed. 24, 58 S. Ct. 75	17
Ballard v. Wrought Iron Range Co., 81 S. 429, 144 La. 931	24
Best & Co. v. Maxwell, 311 U. S. 454, 61 S. Ct. 334, 335, 85 L. Ed. 275	35
Brenard Mfg. Co. v. Jones, 269 S. W. 722, 207 Ky. 566	24
Brennan v. Titusville, 153 U. S. 289, 38 L. Ed. 719	24
Brimmer v. Rebman, 138 U. S. 78, 81, 34 L. Ed. 862	26
Buck Stove & Range Co. v. Vickers, 226 U. S. 205, 57 L. Ed. 189, 33 S. Ct. 41	24
California v. Thompson, 313 U. S. 109, 61 S. Ct. 930, 85 L. Ed. 1219	14, 19
Carlson v. California, 310 U. S. 106, 84 L. Ed. 1104, 60 S. Ct. 746	5
Charlton Silk Co. v. Jones, 212 Pac. 203, 190 Cal. 341	23
Chicago, M. & St. P. Ry. Co. v. Solan, 169 U. S. 133, 18 S. Ct. 289, 42 L. Ed. 688	15
Chicago Portrait Co. v. City of Bellingham, Wash., D. C., 270 Fed. 584	23
City of Roanoke v. Stewart Grocery Co., 176 S. 820	23
City of Rushville v. Heyneman, 114 N. E. 691, 186 Ind. 1	24
Crenshaw v. Arkansas, 227 U. S. 389, 57 L. Ed. 565, 33 S. Ct. 294	24, 26
Crump v. McCord, 113 S. E. 534, 154 Ga. 147	23
Crutcher v. Kentucky, 141 U. S. 47, 35 L. Ed. 649	16, 26

PAGE

Edwards v. California, 314 U. S. 160, 86 L. Ed. 119, 62 S. Ct. 164 5

Engle v. O'Mally, 219 U. S. 128, 55 L. Ed. 128 25

Gibbons v. Ogden, 9 Wheat. 1 (200) (293) (210), 6 L. Ed. 23 .. 18

Hall v. Geiger Jones Co., 242 U. S. 539, 37 S. Ct. 217, 61 L. Ed. 481 ..... 25, 27

Hatch v. Reardon, 204 U. S. 152, 51 L. Ed. 415 25

Hennington v. State of Georgia, 163 U. S. 299, 16 S. Ct. 1086, 41 L. Ed. 166 15

Higgin Mfg. Co. v. Foreman Bros. Banking Co., 222 Illinois App. 29 24

Hoopeston Canning Co. v. Cullen, 318 U. S. 313, 87 L. Ed. 777 .. 27

Hump Hairpin Mfg. Co. v. Emmerson, Illinois, 42 S. Ct. 305, 258 U. S. 290, 66 L. Ed. 622 23

Indianapolis Brewing Co. v. Liquor Comm., 305 U. S. 391, 59 S. Ct. 254, 83 L. Ed. 243 25

In re Tax Cases (Kans.), 161 P. (2d) 726 ..... 22, 34

International Text Book Co. v. Pigg, 54 L. Ed. 678, 217 U. S. 91 26

Jewell Tea Co. v. Lee's Summit (Mo.), 217 Fed. 965, 133 C. C. A. 637 26

Kelly v. Washington, 302 U. S. 1, 58 S. Ct. 87, 82 L. Ed. 3 ... 14, 18

Larkin Co. v. Commonwealth, 189 S. W. 3, 172 Ky. 106 24

L. D. Powell Co. v. Rountree, 247 S. W. 389, 157 Ark. 121, 30 A. L. R. 414 23

Lemke v. Farmers Grain Co., 258 U. S. 50, 42 S. Ct. 244, 66 L. Ed. 459 24

London Guaranty and Accident Co. v. Watte, 234 Illinois App. 497 23

Louisville & N. R. Co. v. State of Ky., 161 U. S. 677, 16 S. Ct. 714, 40 L. Ed. 849 15

McCall v. California, 136 U. S. 104, 34 L. Ed. 391 26

PAGE

McGoldrick, Comptroller of the City of New York v. Berwind-White Coal Mining Co., 309 U. S. 33, 60 S. Ct. 388, 84 L. Ed. 565, 128 A. L. R. 876 17

Melton Electric Co. v. Central Credit Corp., 28 S. W. (2d) 507, 234 Ky. 469 24

Mergenthaler Linotype Co. v. Gore, 160 S. 481, 118 Fla. 889 23

Minnesota v. Barber, 136 U. S. 313, 34 L. Ed. 455 26

Missouri K. & T. Ry. Co. v. Haber, 169 U. S. 613, 18 S. Ct. 488, 42 L. Ed. 878 15

New York, N. H. & H. R. Co. v. People of State of New York, 165 U. S. 628, 17 S. Ct. 418, 41 L. Ed. 853 15

Parker v. Brown, 317 U. S. 341, 63 S. Ct. 307, 87 L. Ed. 315 ..... 14, 19, 35

Paul v. Virginia, 8 Wall. 168 ..... 27, 29

Real Silk Hosiery Co. v. City of Portland, 268 U. S. 325, 45 S. Ct. 525, 69 L. Ed. 983 24

Richard Young Co. v. Meyer, Rudolph Shoe Co., 261 Illinois App. 327 23

Schaffers v. Farmers Grain Co., 268 U. S. 189, 69 L. Ed. 909, 45 S. Ct. 1 24

Sears v. Superior Court in and for Calaveras County, 24 P. (2d) 842-843 5

Security Finance Co. v. Collins, 5 S. W. (2d) 886, 244 Ky. 134 24

Sillin v. Kesseg Ellis Drug Co., 26 S. W. (2d) 122, 181 Ark 3867 23

Simpson v. Shepard, 230 U. S. 352, 33 S. Ct. 729, 57 L. Ed. 1511 35

Sioux Remedy Co. v. Cope, 235 U. S. 197, 35 S. Ct. 57, 59 L. Ed. 493 26

Sonneborn Bros. v. Cureton, Tex., 43 S. Ct. 643, 262 U. S. 506, 67 L. Ed. 1095 23

South Carolina State Highway Dept. v. Barnwell Bros., Inc., 303 U. S. 177, 58 S. Ct. 510, 82 L. Ed. 734 ..... 20, 21, 35

PAGE

State v. Bornstein, 78 Atl. 281, 107 Me. 260 26

State v. Premier Malt Sales Co., 136 S. 5, 172 La. 923 24

State Board v. Young Market Co., 299 U. S. 59, 57 S. Ct. 77, 81 L. Ed. 38 25

State Farm Mutual Auto. Co. v. Duel, 88 L. Ed. 481, 324 U. S. 154, 65 S. Ct. 573 27

Stewart v. Michigan, 232 U. S. 665, 58 L. Ed. 786 24

St. Louis Coimpress v. Arkansas, 260 U. S. 34, 67 L. Ed. 297, 43 S. Ct. 145 33

Texas Transport Co. v. New Orleans, 264 U. S. 150, 68 L. Ed. 611 24

Unemployment Reserve Comm. v. Francis H. Assn., 137 P. (2d) 64 4

United States v. Dahnke-Walker Milling Co., 42 S. Ct. 106, 257 U. S. 282, 66 L. Ed. 239 26

United States v. Southeastern Underwriters Assn., 64 S. Ct. 1162, 88 L. Ed. 1082, 322 U. S. 533 ..... 3, 7, 12, 13, 16, 18, 21, 27, 29

Wagner v. City of Covington, 251 U. S. 95, 40 S. Ct. 93, 64 L. Ed. 157 26

Wallings v. Michigan, 116 U. S. 446, 29 L. Ed. 691 26

Ware and Leland v. Mobile Co., 209 U. S. 405, 52 L. Ed. 855 25

Webber v. Virginia, 103 U. S. 344, 26 L. Ed. 565 26

Weeks v. United States, 38 S. Ct. 219, 245 U. S. 618, 62 L. Ed. 513 26

Western Oil Refining Co. v. Lipscomb, Tenn., 37 S. Ct. 623, 244 U. S. 346, 61 L. Ed. 1181 23

Western Union Telegraph Co. v. Kansas, 216 U. S. 1, 27, 54 L. Ed. 355 26

Wilk v. City of Barstow, 97 S. 307, 86 Fla. 186 23

Wilmington Dry Goods Co. v. Nat'l Automatic Mach. Co., Super., 190 Atl. 735 23

PAGE

Wisconsin, M. & P. R. Co. v. Jacobson, 179 U. S. 287, 21 S. Ct. 115, 45 L. Ed. 194 15
W. W. Kimball Co. v. Read, 185 Pac. 192, 43 Cal. App. 342 23

CONSTITUTIONAL AND STATUTORY PROVISIONS.

California Code of Civil Procedure, Sec. 963 ..... 3, 4
California Constitution, Art. 6, Sec. 4 4
California Constitution, Art. 6, Sec. 4(b) 4
California Insurance Code, Sec. 31 31
California Insurance Code, Sec. 32 31
California Insurance Code, Sec. 703(a) 2, 30, 31
California Insurance Code, Sec. 703(b) 31
California Insurance Code, Sec. 703(c) 32
California Insurance Code, Sec. 1642 ..... 2, 30
California Insurance Code, Sec. 1760 33
California Insurance Code, Chap. 6, Secs. 1760-1779 30
California Insurance Code, Sec. 1779 32
California Insurance Code, Sec. 10818 ..... 12, 30
Seventy-ninth Congress, Public Law 15 (Ch. 20; s. 40) (McCarran Act) 34
United States Codes, Annotated, Title 15, Secs. 1, 7, 8, 11, 12, 13, 14, 15, 21, 27, 45 (Sherman Anti-Trust Act) 34
United States Constitution, Art. 1, Sec. 8, para. 3 (Commerce Clause) 2, 9
United States Constitution, Art. 4, Sec. 2, para. 1 (Equality Clause) 3
United States Constitution, Fourteenth Amendment 2, 3, 9
United States Constitution, Twenty-first Amendment 25
United States Statutes of January 31, 1928, C. 14, Sec. 1, 45 Stat. 54, 28 U. S. C. A., Secs. 344 and 861(a) 3

TEXTBOOKS.

1 California Jurisprudence, Supp., pp. 284-5, para. 16 4
2 California Jurisprudence, p. 132, para. 16 4
1 Couch, Encyclopedia of Insurance Law, No. 245D, p. 578 33
National Underwriter, Aug. 16, 1945, p. 5 30

IN THE

Supreme Court of the United States

October Term, 1945

No. 274

F. O. ROBERTSON,

Appellant.

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

APPELLANT'S OPENING BRIEF.

The Superior Court of the State of California in and for the County of Ventura which upheld the conviction of appellant in the Justice Court of Ventura Township, delivered an Opinion which was not reported, but which appears in the Clerk's Transcript of the Record [R. pp. 41-43].

Statement of Grounds Upon Which Jurisdiction Is Invoked.

The grounds upon which appellant invokes the jurisdiction of the Supreme Court are:

I.

The appellant, F. O. Robertson, was arrested and convicted in the Justice Court in Ventura County, State of

California, and that the said judgment was affirmed in the court of last resort, the Superior Court of the said state in and for the County of Ventura, for assisting in a transaction which constitutes interstate commerce, and that the said conviction was in violation of appellant's rights under the Commerce Clause of the Constitution of the United States (Art. 1, Sec. 8, para. 3 of the Constitution) and the Fourteenth Amendment thereto.

The sections of the California statutes under which appellant was arrested and convicted are as follows:

Section 703(a) of the Insurance Code of the State of California which provides as follows:

> "703. Except when performed by a surplus line broker, the following acts are misdemeanors when done in this State:
>
> "(a) Acting as agent for a nonadmitted insurer in the transaction of insurance business in this State",

and Section 1642 of the Insurance Code of the State of California, which provides as follows:

> "1642. A person shall not act as an insurance agent, broker, or solicitor until a license is obtained from the Commissioner, authorizing such person so to act."

II.

The above statutes of the State of California, as applied to the acts of the appellant, are unconstitutional, and, as so applied, are also in violation of the above sections of the Constitution of the United States.

III.

That the acts of the appellant in behalf of a non-admitted insurer in the State of California did not constitute "doing business" in that State, but amounted only to

the performance of one act in a series of negotiations constituting an interstate transaction, and since under the authority of *United States v. Southeastern Underwriters Assn.*, 64 S. Ct. 1162, 88 L. Ed. 1082, 322 U. S. 533, insurance is now commerce, the transaction was entitled to the protection of the above cited Commerce Clause of the Constitution, the Equality Clause (Art. 4, Sec. 2, para. 1 of the Constitution), and the Fourteenth Amendment thereto.

IV.

The jurisdiction of the Supreme Court to review by direct appeal the judgment herein complained of is conferred by the statute of January 31, 1928, C. 14, Sec. 1, 45 Stat. 54, 28 U. S. C. A., Sec. 344 and 861(a).

V.

The judgment complained of was entered herein in the Superior Court of the State of California in and for the County of Ventura on the 29th day of May, 1945, and application for appeal was presented on the 29th day of May, 1945. The said court was the highest court in the State of California to which an appeal could be taken.

Cases in Which Appeal May Be Taken From Superior Court.

Sec. 963, Calif. Code of Civil Procedure.

"An appeal may be taken from the Superior Court in the following cases:

"1. From a final judgment entered in an action or special proceeding commenced in the Superior Court or brought into the Superior Court from another court."

2 *Cal. Jur.* p. 132, para. 16;

1 *Cal. Jur., Suppl.*, pp. 284-5, para. 16.

"The bringing of an action into the Superior Court by appeal is not bringing it into the Superior Court within the meaning of Section 963, Cal. C. C. P. unless the Superior Court had original jurisdiction of the matter."

Unemployment Reserve Commission v. Francis H. Assn., 137 P. (2d) 64.

"If the Municipal Court had jurisdiction herein, then the determination of the Appellate Department of the Superior Court is final and the case is not appealable (Calif. Constitution, Art. 6, Sec. 5). If a court had original jurisdiction, it did not exercise it."

Art. 6, Sec. 4, Calif. Constitution.

"The Supreme Court shall have appellate jurisdiction on appeal from the Superior Court in all cases in equity, except such as arise in municipal or justice court; also in all cases at law which involve the title or possession of real estate or the legality of a tax imposed, assessment, toll, or municipal fine. Also in such probate matters, etc."

Art. 6, Sec. 4(b), Calif. Constitution.

"The District Court of Appeal shall have Appellate jurisdiction on appeals from the Superior Court (except in cases where appellate jurisdiction is given the Supreme Court); in all cases at law in which the Superior Courts are given original jurisdiction; also in all cases of forcible entry and detainer (except

such as arise in a municipal or justice or other inferior courts) * * * also on questions of law alone in all criminal cases prosecuted by indictment or information except where the judgment of death has been rendered."

Edwards v. California, 314 U. S. 160, 86 L. Ed. 119, 62 S. Ct. 164.

"Appeal from a judgment of the Superior Court of California which affirmed the conviction of Edwards under a California statute declaring it to be a misdemeanor for any person to bring, or assist in bringing, into the State any non-resident of the State, knowing him to be an indigent person. The court below was the highest court to which an appeal could be taken under the laws of California. The case was argued here, and reargument was ordered at the 1940 Term, 313 U. S. 545."

Carlson v. California, 310 U. S. 106, 84 L. Ed. 1104, 60 S. Ct. 746.

Involving city ordinance prohibiting picketing.

Sears v. Superior Court in and for Calaveras County, 24 P. (2d) 842-843.

"Where the right of appeal existed the writ of certiorari will not lie. In both the Roberts and the Hood cases, *supra*, the writs of certiorari were denied, notwithstanding the fact that judgments of the inferior court had been affirmed on appeal to the superior court from which last-mentioned court there was no appeal."

Statement of the Case.

One, Alvin J. O'Lein, had had trouble in obtaining insurance in the State of California on account of his age [R. p. 14]. He had heard about the First National Benefit Society of Phoenix, Arizona, by radio and had seen its literature [R. p. 14]. He had received, through the United States mails, certain advertising matter containing an inquiry card. The said A. J. O'Lein forwarded the said inquiry card through the same mail to Phoenix, Arizona. The insurer, being then in touch with the proposed insured, forwarded the inquiry to the appellant, L. O. Robertson, through the mail, who then called on the said A. J. O'Lein at Ventura, California. An application was signed by O'Lein and his wife and forwarded direct to the insurer in Arizona. The application was accepted and the policy issued at Phoenix, Arizona and forwarded direct to the said O'Lein at Ventura, California with instructions to make all payments direct to the insurer [R. pp. 14, 21].

A representative of an admitted insurance company called upon A. J. O'Lein [R. p. 14], and appellant was arrested, charged with violation of Section 703(a) and Section 1642 of the Insurance Code of the State of California [R. pp. 1-2].

The case was tried on September 26, 1944 [R. p. 5]. The defendant was found guilty on both counts, and, by stipulation, September 29, 1944 was set for the date of pronouncement of judgment. Judgment was pronounced on said date and appeal was taken to the Superior Court of the State of California in and for the County of Ventura [R. pp. 2-3]. The case was set for hearing in the said Superior Court in Ventura on the 4th day of November, 1944.

The question as to the conflict of the above-named sections of the California Insurance Code, as applied to appellant, being contrary to the Constitution and Laws of the United States, was first raised by argument at the close of the trial in the Justice Court.

After the pronouncement of judgment and upon the filing of a notice of appeal in the said Justice Court, the appellant, F. O. Robertson, also filed a Statement on Appeal, setting forth his grounds and points upon which he relied in the said appeal, stating that the evidence was insufficient to justify the judgment of the Justice Court for the reason that the act of the appellant was one of a series of transactions constituting interstate commerce [R. pp. 3-5]. The Reporter's Transcript of the proceedings in the Justice Court was introduced into evidence and by stipulation made the evidence in the Superior Court. Extensive briefs were filed setting forth the contention of the appellant that the acts complained of constituted a transaction in interstate commerce, and that the said sections as applied thereto were an undue burden on interstate commerce and in fact a prohibition thereof.

On the 20th day of April, 1945, the Honorable Louis C. Drapeau, Judge of the said Superior Court, signed a Memorandum of Opinion in the said case [R. pp. 41-43], upholding the conviction in the Justice Court, which opinion held in effect that although insurance business transacted across state lines was interstate commerce under the decision in *United States v. Southeastern Underwriters Assn.*, 64 S. Ct. 1162, 88 L. Ed. 1082, 322 U. S. 533, it was, nevertheless, subject to the regulations imposed by the above-mentioned sections of the California Insurance Code. The Superior Court rendered its judgment affirming the conviction in the Justice Court as of May 29, 1945 [R. p. 44], and application for appeal was presented on May 29, 1945 [R. pp. 45-46].

SPECIFICATION OF ERRORS.

I.

The Judgment Is Contrary to the Law and to the Constitution of the United States of America.

A. The said Judgment has found the said F. O. Robertson guilty of an offense of failing to obtain a license to assist in a transaction in interstate Commerce.

B. The law under which the said judgment was rendered is contrary to the Constitution of the United States, in that it imposes an undue burden on Interstate Commerce.

C. The law under which the said Judgment was rendered is contrary to the law and the Constitution of the United States, in that it constitutes a prohibition against the defendant engaging in interstate transactions.

D. The said Judgment is contrary to the law and evidence in that the defendant has been adjudged guilty of an offense for assisting a non-admitted insurer to complete an interstate transaction insuring the life of one who could not obtain life insurance from an admitted insurer and which even surplus line brokers could not write because the premium charge was less than that of an admitted insurer.

II.

The Judgment Is Contrary to the Evidence in Each Particular in That It Is Contrary to the Law and in Conflict to the Constitution of the United States of America.

A. The Judgment of the said Court is contrary to the evidence in that the said evidence shows that the laws of the State of California under which appellant was prosecuted are in conflict with Art. 1. Section 8. para. 3, known as the Commerce Clause of the Constitution of the United States. and the Fourteenth Amendment to the Constitution.

III.

The Said Superior Cour Erred in Holding That the Said Sections of the California Insurance Code (703(a) and 1642), as Applied to the Acts of the Appellant Complained of Herein, Were Not in Conflict With the Laws or Constitution of the United States and in Holding in Favor of Their Validity.

SUMMARY OF ARGUMENT.

I.

A local statute which discriminates, either by way of regulation or taxation, between local companies and those engaged in interstate commerce is void. The law of the State of California which will admit only those life insurance companies whose bookkeeping system is on the legal reserve basis to do business in that state, and is, at the same time, allowing a group of insurance companies in that state to operate on the non-legal reserve basis is void as applied to transactions in interstate commerce.

II.

Where the subjects on which the power to legislate may be exercised are local in their nature or operation or constitute mere aids to commerce, the authority of the state may be exerted by the state through its laws until Congress or an act of Congress supersedes it, but where the act purports to reach out across state lines and regulate business transacted in other states, it violates the Commerce Clause of the United States Constitution.

III.

The law of the State of California cannot require the party engaged in interstate commerce to obtain its permission by way of license to complete an interstate transaction with one of its citizens.

The laws of the State of California as applied to the acts for which the appellant was tried and convicted are unconstitutional in that they constitute an undue burden upon an interference with interstate commerce, and in that they prohibit interstate commerce.

IV.

The acts for which appellant was convicted, of aiding a non-admitted insurer and of transacting business in the State of California, as set out by the Superior Court in its Opinion [R. pp. 41-43] does not constitute doing business in the State of California.

V.

The only exception to the prohibition against assisting in any interstate insurance transaction in the State of California is the unconstitutional and discriminatory surplus line brokers law, under which, anyone who endeavors to assist in a transaction in interstate commerce must obtain a license, pay a discriminatory three per cent tax, must not write the business in a non-admitted insurer unless there is no admitted insurer in which the business can be written, and he must not write it for a less premium than it would be written by any company admitted to do business in the State of California.

VI.

Congress cannot amend the Constitution and it has not intended by any enactment to extend state regulation of insurance beyond the regulations permissible under the Commerce Clause of the Constitution. The dividing line between state and federal power is fixed by the Constitution. Congress could not give the states any more power to regulate interstate commerce than they already have.

ARGUMENT.

I.

The business of insurance is commerce, and when transacted across state lines, is interstate commerce. (*United States v. Southeastern Underwriters Assn.*, 64 S. Ct. 1162; 88 L. Ed. 1082, 322 U. S. 533.)

The sections of the California Insurance Code, cited above, forbid the appellant from assisting in such a transaction as that described in the Court's Memorandum of Opinion [R. pp. 41-43] unless the insurer be admitted to write business in the State of California.

This is not only a requirement that the consent of the State must first be obtained before appellant or anyone could assist an insurer to complete an interstate transaction within the State of California, but in view of Section 10818 of the same Code, are an absolute prohibition against the defendant assisting in any transaction for the insurer involved herein or any similar insurer under any circumstances. The said section reads as follows:

> "10818. On and after January 1, 1940, no new insurer may be organized or admitted to operate under this chapter. Nothing herein contained shall prohibit an insurer theretofore existing under or by virtue of this chapter from transforming to an insurer operating under the provisions of Chapter 9a of this part nor shall anything herein contained prohibit an association now operating under Chapter 8 of this part from transforming to an insurer operating under this chapter at times and in the manner provided in Chapter 8. Any corporation formed pursuant to section 10815, which prior to January 1, 1940, exhibits proof satisfactory to the commissioner that it has procured one hundred subscribers or applicants who have each paid the required initial premium, and

which also deposits with the commissioner on or before January 1, 1940, the sum of $1,000, as a payment on its statutory deposit, may be admitted on completion of its organization and statutory deposit on or before July 1, 1940."

An important and serious question is involved in this transaction. The Reporter's Transcript shows that the Witness O'Lein had had trouble on account of his age in obtaining any insurance at all in the State of California [R. p. 14] and that he had heard about the insurer over the radio and had seen literature about it as follows [R. p. 14]:

"Q. Mr. O'Lein, did you say you have had some trouble in getting insurance? A. At my age a fellow usually does.

Q. And that is the reason that you applied to this particular company for a policy? A. That is the reason I became interested in that policy. I think I had heard something about that policy over the radio and seen literature, and it was just handy."

Having received an inquiry card, he mailed it to the insurer involved in the State of Arizona, the same card being returned by the said insurer to the appellant herein. The appellant called upon the inquirer, and an application was signed and forwarded direct to the insurer, and the transaction completed approximately as set out in the Court's Memorandum of Opinion [R. pp. 41-43].

It has been the contention of the State in this matter and the holding of the Court in the Memorandum of Opinion [R. pp. 41-43] that the decision of the Supreme Court in *United States v. Southeastern Underwriters Assn.*, 64 S. Ct. 1162, 88 L. Ed. 1082, 322 U. S. 533, does not in any manner affect state regulation of insur-

ance companies, but that it is commerce when transacted across state lines only when a *Federal* law is being interpreted, and that the same business is not commerce, and hence not interstate commerce when a *state* law is being construed. The said decision by the United States Supreme Court, however, does not distinguish between two different laws applied to a business, but between two different activities of the said business which may be interstate in one phase and intrastate in another. The trial court has quoted the said decision on page 1089 of the said report in part as follows:

> "* * * To uphold insurance laws of other states, including tax laws, Paul v. Virginia's generalization and reasoning have been consistently adhered to."

It is not the contention of appellant that the State would have no right to regulate insurance business. We agree that the decisions in a limited number of cases hold that where the regulation is purely local in its application the states may regulate interstate commerce:

> *Kelly v. Washington*, 302 U. S. 1, 58 S. Ct. 87, 82 L. Ed. 3;
>
> *Parker v. Brown*, 317 U. S. 341, 63 S. Ct. 307, 87 L. Ed. 315;
>
> *California v. Thompson*, 313 U. S. 109, 61 S. Ct. 930, 85 L. Ed. 1219.

These decisions, however, have been applied in cases where the state law affects only commerce coming into the regulating state or require acts to be done within the regulating state, and which do not have an extraterritorial effect. The law under which appellant was prosecuted, which prohibits him from assisting a non-admitted insurer in transacting business with a California resident, coupled

with the requirements for such admission reach out across the state lines and regulate the insurer in the state of its organization and in every state in which it transacts business.

In the exercise of the police power, the states or their municipalities may enact statutes and ordinances to protect the public health, the public morals, the public safety, and the public convenience, that is, they may adopt any legislation or regulation for any of those purposes and relative to interstate or foreign commerce, provided such laws or ordinances are local in their character and affect interstate commerce incidentally only.

Hennington v. State of Georgia, 163 U. S. 299, 16 S. Ct. 1086; 41 L. Ed. 166;

Louisville & N. R. Co. v. State of Ky., 161 U. S. 677, 16 S. Ct. 714, 40 L. Ed. 849;

New York, N. H. & H. R. Co. v. People of State of New York, 165 U. S. 628, 17 S. Ct. 418, 41 L. Ed. 853,

and such a power is favorably recognized when it is so exercised to be an aid to interstate commerce.

Chicago, M. & St. P. Ry. Co. v. Solan, 169 U. S. 133; 18 S. Ct. 289, 42 L. Ed. 688;

Missouri, K. & T. Ry. Co. v. Haber, 169 U. S. 613, 18 S. Ct. 488, 42 L. Ed. 878;

Wisconsin M. & P. R. Co. v. Jacobson, 179 U. S. 287, 21 S. Ct. 115, 45 L. Ed. 194.

The laws of the State of California involved herein say in effect that certain types of insurance companies may transact business within the State of California where such transactions amount to intrastate business and where

the insurer has been admitted and authorized to transact such business, but that no insurer under any circumstances may accomplish a single interstate transaction with a resident of California. Obviously, if such a construction is to be placed upon the *Southeastern Underwriters Association* decision, then all the law governing interstate commerce would have been reversed, at least as far as this particular type of commerce is concerned.

II.

At the time this Court rendered its opinion in *United States v. Southeastern Underwriters Assn.*, 64 S. Ct. 1162, 88 L. Ed. 1082, 322 U. S. 533, the question as to the matter of interference with state regulation had been raised, and in answer to the contention that all state regulation would be abolished, this court said:

> "Accepted without qualification, that broad statement is inconsistent with many decisions of this Court. It is settled that for Constitutional purposes, certain activities of a business may be intrastate and therefore subject to state control, while other activities of the same business may be interstate and therefore subject to federal regulation. And there is a wide range of business and other activities which though subject to federal regulation, are so intimately related to local welfare that, in the absence of Congressional action, they may be regulated or taxed by the states."

In support of each of these three situations, this Court cited cases in the footnotes. Representative of the cases supporting the statement that some activities of a business may be interstate and subject to federal control, the court cited *Crutcher v. Kentucky*, 141 U. S. 47, 35 L. Ed. 649 in which the court stated that it was the undoubted

province of the state legislatures to make regulations with regard to the speed of railroad trains in the neighborhood of cities and towns, with regard to precaution to be taken in the approach of such trains to bridges, tunnels, dips, cuts and sharp curves, and so forth. The court nevertheless held that the law of Kentucky was unconstitutional for the reason that it required that a license be obtained before entering into interstate commerce.

The next case cited by the court was *Atlantic Refining Co. v. Virginia*, 302 U. S. 22, 82 L. Ed. 24, 58 S. Ct. 75. In stating the facts involved in this case, the Court said:

> "First, Virginia recognized the Constitutional right of the company to carry on interstate business without paying an entrance fee. On the other hand, the company conceded that the Federal Constitution does not confer upon it the right to engage in intrastate commerce in Virginia unless it has secured the consent of the State."

The next case cited by the Court was *McGoldrick, Comptroller of the City of New York v. Berwind-White Coal Mining Co.*, 309 U. S. 33, 60 S. Ct. 388, 84 L. Ed. 565, 128 A. L. R. 876. The gist of this case is that the Supreme Court upheld a sales tax by the city of New York on the purchasers of coal which had been shipped to New York from Pennsylvania. In upholding this tax, the Supreme Court laid emphasis upon the fact that the tax is upon the buyer, the seller being liable only if he fails to collect and pay over.

In the other line of cases cited by the Court which are to the effect that other activities of a business which, though subject to Federal regulation are so intimately related to local welfare that in the absence of Congressional

regulation they may be regulated and taxed by the states, are as follows:

The Court here cites first the old case of *Gibbons v. Ogden*, 9 Wheat. 1 (200) (203) (210), 6 L. Ed. 23, which holds that the state may not compel a party to obtain its permission to enter into interstate commerce.

Many of the older cases were cited by the Court. Another case cited by the Court as illustrative of the fact that some phases of a business may be subject to state control, while others are subject to Federal control is:

Kelly v. Washington, 302 U. S. 1, 58 S. Ct. 87, 82 L. Ed. 3.

The pertinent part of this case is well set out in the syllabus, which reads as follows:

> "Inspection of the hull and machinery of motor driven tugs, in order to insure safety and seaworthiness, is not a subject as by its nature requires uniformity of regulation, and therefore this field is open to the States in the absence of conflicting federal regulation under the commerce clause. P. 14.
>
> "If, however, the state goes farther and attempts to impose particular standards as to structure, design, equipment and operation, which in the judgment of its authorities may be desirable but which pass beyond what is plainly essential to safety and seaworthiness, the State may encounter the principal that such requirements, if imposed at all, must be through the action of Congress, which can establish a uniform rule."

In fact all the cases cited by the Court in the *Southeastern Underwriters Association* case, *supra*, distinguished

the sphere of regulation between the states and the federal government upon the basis of sustaining only that state regulation which is local in its application. Following the above quotation from this case, the Court continued:

> "In marking out these activities the primary test applied by the Court is not the mechanical one of whether the particular activity affected by the state regulation is part of interstate commerce, but rather whether, in each case, the competing demands of the state and national interests involved can be accommodated."

In support of the above statement the Court has cited *Parker v. Brown*, 317 U. S. 341, 63 S. Ct. 307, 87 L. Ed. 315. This case involves the California law regarding the marketing of raisins on a pro rate basis and was upheld upon the theory that while it, to some extent, affected interstate commerce it was chiefly local in character. The gist of this case is set out by the Court on page 363 of the United States Report as follows:

> "Examination of the evidence in this case and of available data of the raisin industry in California, of which we may take judicial notice, leaves no doubt that the evils attending the production and marketing of raisins in that state present a problem local in character and urgently demanding state action for the economic protection of those engaged in one of its important industries."

The next case cited by the Court is *California v. Thompson*, 313 U. S. 109, 61 S. Ct. 930, 85 L. Ed. 1219. This case involved the California law requiring those engaged in the business of "transportation agent" who solicits or

negotiates for the sale of transportation on the public highways of the state to obtain a license insuring his fitness, etc." Paragraph One of the Syllabus reads as follows:

> "The commerce clause did not wholly withdraw from the states the power to regulate matters of local concern with respect to which Congress has not exercised its power even though the regulation affects interstate commerce."

Beginning on page 114 of the United States Report, the Court said:

> "The present case is not one of prohibiting interstate commerce or licensing it on conditions which restrict or obstruct it. *Crutcher v. Kentucky*, 141 U. S. 47; *Dahnke-Walker Co. v. Bondurant*, 257 U. S. 282. For here the regulation is applied to one who is not himself engaged in the transportation but who acts only as broker or intermediary in negotiating a transportation contract between the passengers and the carrier. The license required of those engaged in such business is not conditioned upon any control or restrictions of the movement of the traffic interstate but only on the good character and responsibility of those engaged locally as transportation broker."

The next case cited by the Court to uphold the above statement is *South Carolina State Highway Department v. Barnwell Bros. Inc.*, 303 U. S. 177, 58 S. Ct. 510, 82 L. Ed. 734.

This case upholds a law of South Carolina regulating the use of state highways. It is based upon two proposi-

tions: First, that the regulations are merely local in their application and Second, that the regulations apply to the use of highways constructed by the State of South Carolina with its own funds and that to deprive the state of the right to regulate its use when Congress has not acted and when the application is purely local in character would be to allow persons doing an interstate business upon the state's highways actually to use state property without the state having any right to designate the terms of such use for the protection of the highways and the public. The footnote in the *SEUA* case which cites the *South Carolina-Barnwell* case, cited above, calls attention to the long list of cases cited in footnote 5 of the latter case.

In fact there are a multitude of cases which uphold the right of the local state to make reasonable regulation of interstate commerce where those regulations are purely local in character and do not restrict, impede, or prohibit such commerce. Again we say, "there are no cases which require a person to obtain the consent of the state to do an interstate business."

If logical demarkation between the requirements of the federal and state governments, as set out in *United States v. Southeastern Underwriters Assn.*, *supra*, is to be continued, then the subject of interstate commerce, known as insurance, will fall logically into line with the long series of cases already established by the Supreme Court and which this court in the said decision itself indicated would apply. However, if the position were taken that the State of California has contended for, that insurance is interstate commerce only for the purpose of applying a federal

law and that all state laws in regard to insurance will continue in application as they were before this decision, then confusion will be the only result. It would mean a separate and different set of rules in the regard of this type of commerce, the source of which would be found in the legislatures of forty-eight states.

Following the line of reasoning set out by this court in the *S. E. A. U.* case, *supra,* the Supreme Court of Kansas (*In re Tax cases, Kansas,* 161 Pac. (2d) 726), has upheld a three per cent tax on foreign fire insurance companies doing business within the State of Kansas. The majority opinion upholding this tax on page 732 of the report bases its decision upon the fact that practically all of the transactions connected with this insurance were within the State of Kansas; that is, the applications were not only solicited in Kansas, they were accepted or rejected in Kansas, they were issued in Kansas, binding slips were accepted in Kansas, collections were made in Kansas, the agents of the company settled claims in Kansas and in fact, the only element in the situation which existed outside of the State of Kansas was that the companies were organized in other states. The Kansas court followed the language of *S.E. U. A.* and held that the matter of insurance might be regulated by the state unless the transactions stretched across the state lines.

In the case before this court, the only local incident was the filling in of the application in California, while everything else connected with this insurance transaction was effected in the State of Arizona. These facts are not in dispute [Opinion of the Court below, R. pp. 41-43].

III.

Where a sale is made by an agent even where an order is solicited by him and delivery of the goods in consummation of the sale or in the filling of the order requires their transportation from one state to another the transaction is one of interstate commerce, and the state cannot require a license for such purpose.

Sonneborn Bros. v. Cureton, Tex., 43 S. Ct. 643, 262 U. S. 506, 67 L. Ed. 1095;

Hump Hairpin Mfg. Co. v. Emmerson, Ill., 42 S. Ct. 305, 258 U. S. 290, 66 L. Ed. 622;

Western Oil Refining Co. v. Lipscomb, Tenn., 37 S. Ct. 623, 244 U. S. 346, 61 L. Ed. 1181;

Chicago Portrait Co. v. City of Bellingham, Wash., D. C. 270 F. 584;

City of Roanoke v. Stewart Grocery Co., 176 S. 820;

Sillin v. Kesseg Ellis Drug Co., 26 S. W. (2d) 122, 181 Ark. 3867;

L. D. Powell Co. v. Rountree, 247 S. W. 389, 157 Ark. 121, 30 A. L. R. 414;

Charlton Silk Co. v. Jones, 212 Pac. 203, 190 Cal. 341;

W. W. Kimball Co. v. Read, 185 Pac. 192, 43 Cal. App. 342;

Wilmington Dry Goods Co. v. Nat'l Automatic Mach. Co. Super., 190 A. 735;

Mergenthaler Linotype Co. v. Gore, 160 S. 481, 118 Fla. 889;

Wilk v. City of Barstow, 97 S. 307, 86 Fla. 186;

Crump v. McCord, 113 S. E. 534, 154 Ga. 147;

Richard Young Co. v. Meyer Rudolph Shoe Co., 261 Ill. App. 327;

London Guaranty and Accident Co. v. Waite, 234 Ill. App. 497;

Higgin Mfg. Co. v. Foreman Bros. Banking Co., 222 Ill. App. 29;

City of Rushville v. Heyneman, 114 N. E. 691, 186 Ind. 1;

Melton Electric Co. v. Central Credit Corp., 28 S. W. (2d) 507, 234 Ky. 469;

Security Finance Co. v. Collins, 5 S. W. (2d) 886, 244 Ky. 134;

Brenard Mfg. Co. v. Jones, 269 S. W. 722, 207 Ky. 566;

Larkin Co. v. Commonwealth, 189 S. W. 3, 172 Ky. 106;

State v. Premier Malt Sales Co., 136 S. 5, 172 La. 923;

Ballard v. Wrought Iron Range Co., 81 S. 429, 144 La. 931;

Real Silk Hosiery Co. v. City of Portland, 268 U. S. 325, 45 S. Ct. 525, 69 L. Ed. 983;

Brennan v. Titusville, 153 U. S. 289, 38 L. Ed. 719;

Texas Transport Co. v. New Orleans, 264 U. S. 150, 68 L. Ed. 611;

Alpha Portland Cement Co. v. Commonwealth of Mass., 268 U. S. 203, 45 S. Ct. 477, 69 L. Ed. 917;

Schaffers v. Farmers Grain Co., 268 U. S. 189, 69 L. Ed. 909, 45 S. Ct. 1;

Lemke v. Farmers Grain Co., 258 U. S. 50, 42 S. Ct. 244, 66 L. Ed. 459;

Buck Stove & Range Co. v. Vickers, 226 U. S. 205, 57 L. Ed. 189, 33 S. Ct. 41;

Stewart v. Michigan, 232 U. S. 665, 58 L. Ed. 786;

Crenshaw v. Arkansas, 227 U. S. 389, 57 L. Ed. 565, 33 S. Ct. 294.

A state or its officers may not interfere with interstate sales, although the law is designed to prevent fraud in the selling of securities which affects securities coming from other states by requiring that persons dealing in them within the state, shall first be licensed, is not valid as a direct burden on interstate commerce, such a law is only valid where it affects only intrastate sales and does not interfere with interstate sales or shipment of the securities.

Hall v. Geiger Jones Co., 242 U. S. 539, 37 S. Ct. 217, 61 L. Ed. 481;

Hatch v. Reardon, 204 U. S. 152, 51 L. Ed. 415;

Ware and Leland v. Mobile Company, 209 U. S. 405, 52 L. Ed. 855;

Engle v. O'Mally, 219 U. S. 128, 55 L. Ed. 128.

In *Hall v. Geiger Jones Company*, cited above, the court said:

> "The provisions of the law, it will be observed, apply to dispositions of securities within the State and while information of those issued in other States and foreign countries, is required to be filed (SS63 73-9); they are only affected by the requirement of a license of one who deals in them within the State. Upon their transportation into the state there is no impediment—no regulation of them or interferences with them after they get there."

State regulation of interstate sales of commodities has been upheld only in the case of intoxicating liquors and that only on the authority of the Twenty-First Amendment to the Constitution.

State Board v. Young Market Co., 299 U. S. 59, 57 S. Ct. 77, 81 L. Ed. 38;

Indianapolis Brewing Co. v. Liquor Commission, 305 U. S. 391, 59 S. Ct. 254, 83 L. Ed. 243.

Provision of the state law requiring a certificate or license to engage in interstate commerce is unconstitutional and cannot be defended as a police measure.

McCall v. California, 136 U. S. 104, 34 L. Ed. 391;

Wagner v. City of Covington, 251 U. S. 95, 40 S. Ct. 93, 64 L. Ed. 157;

Assn. of Army and Navy Stores v. W. H. Bruen and Co., 229 N. W. 580, 179 Minn. 457;

Weeks v. United States, 38 S. Ct. 219, 245 U. S. 618, 62 L. Ed. 513;

Minn v. Barber, 136 U. S. 313, 34 L. Ed. 455;

Wallings v. Mich., 116 U. S. 446, 29 L. Ed. 691;

Crenshaw v. State, 33 S. Ct. 294, 227 U. S. 389, 57 L. Ed. 565;

Jewell Tea Co. v. Lee's Summit, Mo., 217 Fed. 965, 133 C. C. A. 637;

State v. Bornstein, 78 A. 281, 107 Me. 260;

Webber v. Virginia, 103 U. S. 344, 26 L. Ed. 565;

U. S. v. Dahnke-Walker Milling Co., 42 S. Ct. 106, 257 U. S. 282, 66 L. Ed. 239;

Crutcher v. Ky., 141 U. S. 47, 57, 35 L. Ed. 649;

Western Union Telegraph Co. v. Kansas, 216 U. S. 1, 27, 54 L. Ed. 355;

Sioux Remedy Co. v. Cope, 235 U. S. 197, 35 S. Ct. 57, 59 L. Ed. 493;

Brimmer v. Rebman, 138 U. S. 78, 81, 34 L. Ed. 862;

International Text Book Co. v. Pigg 54 L. Ed. 678, 217 U. S. 91;

and many others.

IV.

The Supreme Court recently had before it the case of *State Farm Mutual Auto. Co. v. Duel,* 88 L. Ed. 481, 324 U. S. 154, 65 S. Ct. 573, which was disposed of without deciding the question of interference of interstate commerce raised for the first time in this court.

The court recognized its decision in the *Southeastern Underwriters Association* case as a supervening event, changing the situation in regard to interstate commerce. In discussing this matter the court said:

> "If a state undertook to regulate out of state activities through such a requirement different questions would be posed."

We agree that the State of California, or any state, may regulate its own insurance companies and every other company doing business within the state, and that it may regulate insurance transactions so localized within the state as to constitute "doing business" within that state.

We wish to call the court's attention to its decision in *Hoopeston Canning Co. v. Cullen,* 318 U. S. 313, 87 L. Ed. 777, decided on March 1, 1943. This case was decided approximately a year before the handing down of the decision in *United States v. Southeastern Underwriters Assn., supra,* and while the reasoning of *Paul v. Virginia,* 8 Wall. 168, was still the law. In spite of that fact, this decision does not uphold the law of New York on the ground that it has the right to regulate interstate commerce, but the Court has gone to great length to inquire into and analyze the entire transactions of this company and sustained the right of New York to regulate it by arriving at the conclusion that the company was actually doing business within the State of New York. All of the

transactions of this company were in the State of New York except that its head office was maintained in Illinois and its contracts were signed by proxy in Illinois.

The Court said in part:

> "* * * we conclude that in determining whether insurance business is done within a state for the purpose of deciding whether a state has power to regulate the business, consideration of the location of the activities prior and subsequent to the making of the contract (*Osborn v. Oslin, supra*), of the degree of interest of the regulating state in the object insured, and the location of the property insured are separately and collectively of great weight * * *."

The court continued in substance that since all of the transactions, except the actual signing of the contracts by proxies in Illinois, were transacted in New York, that the insurance company was actually doing business in the State of New York. This careful weighing of the facts to determine whether or not the company was doing business in New York could only be based upon the realization by the Court that if it were not actually doing business within the state, that its interstate transactions would not be subject to regulation by New York.

There are a multitude of cases which uphold the right of the local state to make reasonable regulation of interstate commerce where those regulations are purely local in character and do not restrict, impede or prohibit such commerce, but we have found no cases which uphold the right of the state to require a person to obtain the consent of the state to engage in interstate commerce. If the question involved is the determination of the question as to whether or not an insurer is doing business within

a state, then again the decision in the *Southeastern Underwriters Association* case, itself, sets out a logical and reasonable line of demarkation between the national and state interests. ONE, that there are some phases of a business which the state may regulate because they are purely intrastate. TWO, that there are other phases of a business which are interstate and subject to federal control. THREE, that there are other phases of the same business, which although they may constitute interstate commerce, may be subject to regulations purely local in character, and which would not restrict or impede or prohibit interstate commerce, which in the absence of federal regulation, a state may regulate.

If this line of reasoning is followed, then the cases already decided may be applied orderly and without disturbance or confusion to the subject of insurance which is now commerce, and when transacted across state lines, interstate commerce.

If the position of the State of California is to be upheld, that is, that insurance is commerce only when a Federal law is being interpreted, and that the reasoning of *Paul v. Virginia, supra*, and the cases decided under its authority are to remain in full force as far as state regulation is concerned, then all commerce between the states will remain subject to the conflicting requirements of forty-eight sets of enactments.

To say that the companies constituting the Southeastern Underwriters Association, each admitted to transact business in the state in which it was operating, and with many of its operations conducted in such states were engaged in interstate commerce, and then to hold that such an act performed by appellant on behalf of a foreign insurer already in correspondence with the proposed insured un-

der the conditions set out in the Opinion of the Court below [R. pp. 41-43] is not engaged in interstate commerce, would leave the law in utter confusion. In fact, it would reverse all the definitions of "interstate commerce" and "doing business within a state".

V.

Although the Witness O'Lein had had difficulty in obtaining insurance in the State of California and was desirous of obtaining it, and although he had heard of the company which issued the policy in question to him by radio and had seen its literature and had inquired of the company in regard to its policies [R. p. 14], he was prohibited by the above California law from obtaining such insurance for the reason that the law under which the appellant was prosecuted and convicted—Sections 703(a) and Section 1642 of the California Insurance Code—prohibits a member of a foreign insurer or any person in the State of California from assisting in any such interstate transaction except in the case of a surplus line broker, which broker, under Chapter Six, Sections 1760 to 1779 of the said insurance code, must obtain a license, must pay a discriminatory three per cent tax, must not write the business in a non-admitted insurer, unless there is no admitted insurer in which the risk can be written, or he must not write it for a less premium than it would be written by any company admitted to do business in the State of California. Furthermore, the company with whom this risk was placed could not, under the law, be admitted in the State of California, Section 10818, California In-

surance Code, *supra*. The California law is not merely one regulating the character and responsibility of an agent but absolutely prohibits such an agent from writing or assisting the company with which this risk was placed from doing business, either interstate or intrastate in the State of California.

Certainly a law which prohibits interstate commerce at least places a burden upon it.

There is no law in the State of California requiring an insurance agent or insurance solicitor to obtain a license to engage in that business separated from an agency to represent a particular company or employer. No person could obtain a license in the State of California to perform any transaction for the insurer involved herein or for any nonadmitted company. (Sections 31 and 32 of the California Insurance Code.) This law is not therefore just a means of insuring that such agents be of good moral character, but is also a means of seeing to it that no nonadmitted company transacts any business with a citizen of the State of California.

One of the sections under which the said F. O. Robertson was arrested and prosecuted, is Section 703 of the California Insurance Code. Subdivision "a" thereof makes it a misdemeanor to act as an agent for a nonadmitted insurer in the transaction of insurance business in that state. As a matter of fact, the acts as set forth in the complaint [R. pp. 1-2] do not constitute transacting business in the State of California. The full significance of this section can be ascertained by reading Sections "b"

and "c" thereof. Section "b" prohibits the advertising of a nonadmitted insurer so that even a card in the mail, a radio broadcast or an advertisement in a newspaper would be a violation of this section. Section "c" makes it a misdemeanor to in any other way aid a nonadmitted insurer to transact insurance business in that state, which would include the delivery of a check to a beneficiary or an examination by a physician. The language would also include the act of a citizen in insuring his life or his property with a nonadmitted company.

Further, in spite of the fact that any citizen of California, under the Federal Constitution is entitled to insure his life with any company of his choosing, if he has done this under the authority of the only law in California which will permit it, to-wit, the surplus line brokers' law, he would then be subject to the restrictions set out in Section 1779 of the California Insurance Code which reads as follows:

> "1779. Every insured for whom insurance has been effected with nonadmitted insurers shall, upon request in writing by the commissioner, produce for the commissioner's examination all policies, contracts, and other documents evidencing such insurance, and shall disclose to the commissioner the amount of the gross premiums paid or agreed to be paid for such insurance. For refusal to obey such request, such insured shall forfeit to the State of California the sum of two hundred dollars for each refusal."

It is apparent from these subdivisions that the purpose of this section is not the protection of the insuring public but a conservation of business for companies admitted in

the State of California. Further, other sections of the California law, as well as a long line of decisions, have attempted to preserve to the individual the right to insure his life or his property with any insurer of his choosing. Section 1760 of the California Insurance Code:

> "1760. Any citizen of This State may negotiate and effect insurance on his own property with any nonadmitted insurer."

Allger v. Louisiana, 165 U. S. 580, 41 L. Ed. 832, 17 S. Ct. 427;

St. Louis Compress v. Arkansas, 260 U. S. 34, 67 L. Ed. 297, 43 S. Ct. 145;

Couch Encyclopedia of Insurance Law, Vol. 1, p. 578, No. 245D.

If then, any individual has a right to insure his life with this appellant if he so chooses, how can it be said that after he has contacted the insurer for this purpose that any person who assists him in any of the details thereof has committed an offense or that such acts, legal when done by one person, are illegal when done by another.

VI.

Since, under the Constitution, the Equality Clause must now be applied to this type of interstate commerce and if now, under the Constitution, it cannot be prohibited by the states and if it is more than local in its application or continues in violation of constitutional guarantees, then an act of Congress is of no avail. The meaning of the Constitution is solely the prerogative of the Courts. It cannot be amended by Congress and a construction placed upon it by Congress is not binding upon the Courts.

The Supreme Court of Kansas in *In re Insurance Tax Cases*, cited above, interprets the enactment by Congress of Public Law 15-79th Congress as being intended by Congress merely to state its position to be that it had not intended to regulate insurance commerce.

There are two possible effects of this act. One is that Congress, who originally enacted the Sherman Anti-Trust Act, may now declare a moratorium in the application of that act. It may also clarify its own attitude as to whether or not it has or does wish to invade the field to whatever extent it may be subject to state regulation so long as the Congress has not invaded that field.

In the decision of the Supreme Court of Kansas in *In re Insurance Tax Cases*, 161 P. (2d) 726, at p. 743, the dissenting opinion by Justice Hoch and concurred in by two other justices, in discussing the McCarran Act, reads in part as follows:

> "This was a reassuring expression of the Congressional attitude and intention, but certainly it did not delegate to the states—and could not do so—any power which they did not already have. It is elementary that the dividing line between state and federal power is fixed in the Constitution, as construed by the Supreme Court. If Congress could alter that line at will it could nullify the Constitution. Assuredly Congress did not mean to say by the McCarran Act that a state might now impose discriminatory burdens upon interstate commerce or contravene any of the constitutional guaranties. If it had attempted any such thing its effort would, of course, have been futile."

That opinion has cited and quoted many of the leading cases decided by this court covering this matter.

In the so-called *Minnesota Rate Cases* (*Simpson v. Shepard*), 230 U. S. 352, 33 S. Ct. 729, 739, 57 L. Ed. 1511, it was said:

> "If a state enactment imposes a direct burden upon interstate commerce, it must fall regardless of Federal legislation."

South Carolina v. Barnwell Bros., 303 U. S. 177, 58 S. Ct. 510, 514, 82 L. Ed. 734:

> "The commerce clause by its own force, *prohibits discrimination against interstate commerce*, whatever its form or method. * * * It was to end these practices that the commerce clause was adopted."

Best & Co. v. Maxwell, 311 U. S. 454, 61 S. Ct. 334, 335, 85 L. Ed. 275:

> "The Commerce clause forbids discrimination, whether forthright or ingenious."

Parker v. Brown, 317 U. S. 341, 63 S. Ct. 307, 318, 87 L. Ed. 315, 331:

> "This Court has repeatedly held that the grant of power to Congress by the Commerce Clause did not wholly withdraw from the states the authority to regulate the commerce with respect to matters of local concern, on which Congress has not spoken. * * * A fortiori there are many subjects and transactions of local concern not themselves interstate commerce or a part of its operations which are within the regulatory and taxing power of the states, *so long as state action serves local ends and does not discriminate against the commerce*, even though the exercise of those powers may materially affect it."

Conclusion.

It is not appellant's contention that he would be entitled to conduct an intrastate business in insurance in the State of California. It is not his contention that the regulatory laws of the State of California are void. He is not contending that the State cannot regulate insurance companies organized in that State or actually doing business in that State. It is merely his contention that under this factual situation the State of California could not interfere with or prohibit such interstate transactions.

He does not contend that the McCarran Act enacted by Congress exceeded the power of Congress to legislate unless it is to be construed to confer a power upon the states to prohibit interstate commerce or to add to its power to regulate or to give it more power to regulate than it would have had under the Constitution itself. It is his contention only that since insurance must now be regarded as commerce and when transacted across state lines, interstate commerce, the insurance industry must conform to the tried and beneficial rules laid down by the Supreme Court marking out the boundary lines between state and federal regulation. These rules have been beaten out on the anvil of experience and established by the most careful and logical decisions of this court.

In the language of Frank H. Elmore (National Underwriter, August 16, 1945, p. 5):

> "Thus at long last the legislative, executive and judicial branches of the federal government are in agreement that insurance is commerce and the un-

realistic fiction established in Paul v. Virginia is but a historical memory. * * * The investigation, the indictment and the decision itself all have been criticised and denounced. Some exprobation may have been deserved. But I am confident that benefits will flow to all whose lives, property, or affairs are touched by the great national, or international, institution of insurance from the official recognition that this industry, served by and serving millions, is now entitled to take its true place. By the side of hundreds of other trades and industries, it will go forward in the American way, sharing with them the discipline and protection of the commerce clause of the United States constitution."

We submit, therefore, that the judgment of the Superior Court of the State of California in and for the County of Ventura, entered May 29, 1945, should be reversed and the appellant discharged.

Respectfully submitted,

ALLEN K. PERRY,

ROBERT R. WEAVER,

Counsel for Appellant.

APPENDIX.

California Insurance Code.

Sec. 31. "Insurance agent" means a person authorized, by and on behalf of an insurer, to transact insurance.

Sec. 32. A life agent means an insurance agent licensed to transact life insurance.

Sec. 703. Except when performed by a surplus line broker, the following acts are misdemeanors when done in this State:

(a) Acting as agent for a nonadmitted insurer in the transaction of insurance business in this State.

(b) In any manner advertising a nonadmitted insurer in this State.

(c) In any other manner aiding a nonadmitted insurer to transact insurance business in this State.

In addition to any penalty provided for commission of misdemeanors, a person violating any provision of this section shall forfeit to this State the sum of five hundred dollars, together with one hundred dollars for each month or fraction thereof during which he continues such violation.

Sec. 1642. A person shall not act as an insurance agent, broker or solicitor until a license is obtained from the commissioner, authorizing such person so to act.

Chapter 6. Surplus Line Brokers.

Sec. 1760. Any citizen of this State may negotiate and effect insurance on his own property with any nonadmitted insurer.

Sec. 1760.5. The provisions of this chapter limiting the insurance which may be placed with nonadmitted in-

surers and requiring any report thereof shall not apply to:

(a) Reinsurance of the liability of an admitted insurer.

(b) Insurance against perils of navigation, transit or transportation upon hulls, freights or disbursements, or other shipowner interests; upon goods, wares, merchandise and all other personal property and interests therein, in course of exportation from or importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination and including war risks; and marine builder's risks, dry docks and marine railways, including insurance of ship repairer's liability, and protection and indemnity insurance, but excluding insurance covering bridges or tunnels.

(c) Aircraft insurance.

(d) Insurance on property or operations of railroads engaged in interstate commerce.

The insurances specified in the foregoing paragraphs (b), (c), and (d), may be placed with a nonadmitted insurer only by and through a special lines' surplus line broker. The license of a special lines' surplus line broker shall be applied for and procured and shall be subject to the same fees for filing on issuance in the same manner as the license of a surplus line broker, except that in lieu of the bond required by subdivision (b) of section 1765, there shall be delivered to the commissioner a bond in the form, amounts, and conditions specified in section 1644 of this code and only one fee shall be collected from one person for both licenses. Such licensee in respect to such business shall be subject to all the provisions of this chapter except sections 1761, 1763 and 1775.5.

The commissioner may, in respect to business written or placed under the provisions of this section, require such information and reports thereof as he considers necessary, convenient or advisable for tax or statistical purposes.

Each placing of insurance in violation of this chapter is a misdemeanor.

The commissioner may revoke, suspend or deny any license or certificate of authority granted pursuant to this code whenever he finds, after reasonable notice and hearing, that the licensee or holder of the certificate has committed a violation of this section.

The premium for insurance placed by or through a special lines' surplus line broker pursuant to this section shall not be subject to the tax imposed upon such broker based upon gross premiums paid for insurance placed under authority conferred by his license.

(Added by Stats. 1937, Ch. 729.)

Sec. 1761. Except as provided in sections 1760 and 1760.5, a person within this State shall not transact any insurance on property located or operations conducted within, or on the lives or persons of residents of this State with nonadmitted insurers, except by and through a surplus line broker licensed under this chapter and upon the terms and conditions prescribed in this chapter.

(Amended by Stats. 1937, Ch. 729.)

Sec. 1762. (Repealed by Stats. 1937, Ch. 729.)

Sec. 1763. A surplus line broker may solicit and place insurance, other than as excepted in section 1761, with nonadmitted insurers only if such insurance can not be procured from a majority of the insurers admitted for the particular class or classes of insurance. Such part of the

insurance as can not be so procured may be procured from nonadmitted insurers, if the insurance is not placed in a nonadmitted insurer for the purpose of procuring a rate lower than the lowest rate which will be accepted by any admitted insurer. It shall be conclusively presumed that insurance is placed in violation of this paragraph where the insurance is actually placed with a nonadmitted insurer at a lower rate of premium or lower premium than the lowest rate of premium or the lowest premium which could be obtained from an admitted insurer unless, at the time such insurance attaches, there is filed with the commissioner a statement describing the insurance, specifying the rate and the nearest procurable rates from admitted insurers. Unless the commissioner within five days after such filing notifies the filing broker that in his opinion the placing of the insurance constitutes a violation of this section, the broker may thereafter maintain in effect such insurance. If within such five day period the commissioner notifies the surplus line broker that such insurance is in violation of this section and orders the broker to effect termination of such insurance within ten days from such notice, and the broker fails or refuses to effect such termination, such failure or refusal is a violation of this section. Statements filed under this section shall not be subject to public inspection unless the commissioner determines that the public interest or the welfare of the filing broker requires that any statement be made so subject. The commissioner may make and publish reasonable rules and regulations, consistent with this chapter, in respect to transactions governed thereby and the basis or bases for his determinations hereunder.

(Amended by Stats. 1937, Ch. 729.)

Sec. 1764. (Repealed by Stats. 1937, Ch. 729.)

Sec. 1765. Upon application in such form as the commissioner prescribes, the commissioner shall issue a license authorizing any applicant that is trustworthy and competent to transact an insurance brokerage business in such manner as to safeguard the interest of the insured, to act as a surplus line broker from the date of such license until the first day of July succeeding, on the delivery to the commissioner of a bond to the State of California in the sum of five thousand dollars with an admitted surety insurer conditioned that said licensee will fully and faithfully comply with the requirements of this chapter.

The commissioner shall charge and collect in advance a fee of fifty dollars for filing each application for license to act as a surplus line broker.

(Amended by Stats. 1939, Ch. 452. In effect June 6, 1939.)

Sec. 1766. If in the opinion of the commissioner the solvency of any surety on a bond required in this chapter has become impaired or doubtful, he shall notify the broker, and unless within ten days after receipt of such notice the solvency of such surety is proved to the satisfaction of the commissioner, or a new bond is substituted therefor, the commissioner shall revoke the license of the broker.

Sec. 1767. A surplus line broker shall maintain in good faith an office in this State.

Sec. 1768. Such broker shall keep in said office complete books of the business transacted by him, with non-admitted insurers under his license as a surplus line broker, showing:

(a) The effective dates of such insurance.

(b) The names of the insurers and of the insured.

(c) The gross premium payable therefor.

(d) The terms and character of insurance and location of the subject matter.

(e) Statements in the same detail as in the case of insurance in effect, of all such insurance canceled or on which premiums have been increased or reduced, and the amounts of additional or of return premiums thereon.

Sec. 1769. Whenever required so to do by the commissioner, such surplus line broker shall furnish to the commissioner a list of the majority of the admitted insurers from which the entire amount of insurance desired was not obtainable.

Sec. 1770. The commissioner, whenever he deems necessary, may examine the books and accounts of any surplus line broker for the purpose of determining whether or not the broker is conducting his business in accordance with the provisions of this chapter. For the purpose of making such examination such broker shall allow the commissioner free access at all times to all the broker's books and papers, and the commissioner shall thoroughly inspect and examine all of the broker's affairs.

Sec. 1771. All examinations by the commissioner shall be at the expense of the surplus line broker, such expenses to be paid in advance. If any such broker refuses to pay such expenses in advance, the commissioner may refuse to issue a renewal of the license of such broker and shall revoke the license of the broker.

Sec. 1772. (Repealed by Stats. 1937, Ch. 729.)

Sec. 1773. (Repealed by Stats. 1937, Ch. 729.)

Sec. 1774. On or before the first day of March of each year the surplus line broker shall file with the commissioner a sworn statement of all business transacted under

his license during the last preceding calendar year. Such statement shall contain accounts of:

(a) The gross amount of insurance procured from and placed with nonadmitted insurers during the calendar year.

(b) The gross premium charged therefor, including additional insurance premium.

(c) The gross amount of all insurance canceled during said year.

(d) The gross return premiums thereof.

(e) Any additional premiums charged and the gross premiums returned during that calendar year on insurance previously effected.

Sec. 1775. All such reports and statements shall be made on blanks furnished to the surplus line broker by the commissioner on application therefor.

Sec. 1775.5. Every surplus line broker shall annually, on or before the first day of July of each year pay to the Insurance Commissioner for the use of the State of California a tax of three per cent of the gross premiums upon business done by him under authority of his license during the preceding calendar year, less three per cent of return premiums paid by him by reason of cancellation or reduction of premium, excluding gross premiums paid and return premiums paid by him upon business governed by the provisions of section 1760.5.

For the purpose of determining such tax, the total premium charged for all such nonadmitted insurance placed in a single transaction with one underwriter, or group of underwriters, whether in one or more policies, shall be allocated to this State in such proportion as the total premium on the insured properties or operations in this State, as computed on the exposure in this State on

the basis of any single standard rating method in use in all States or countries where such insurance applies, bears to the total premium so computed in all States or countries in which such nonadmitted insurance may apply. This provision shall not apply to interstate motor transit operations conducted between this and other States. With respect to such operations surplus line tax shall be payable on the entire premium charged on all nonadmitted insurance, less

A. Such portion of the premium as is determined, as herein provided, to have been charged for operations in other States taxing such premium on operations in such States of an insured maintaining its headquarters office in this State;

B. The premium for any operations outside of this State of an insured who maintains a headquarters operating office outside of this State and a branch office in this State.

A penalty of one per cent shall be added for each calendar month or fraction thereof after said first day of July during which such tax or any portion thereof remains unpaid, except that the commissioner may remit the penalty in a case where the commissioner finds, as a result of examination or otherwise, that the failure of or delay in payment arose out of excusable mistake or excusable inadvertence.

(Added by Stats. 1937, Ch. 729.)

Sec. 1776. Any surplus line broker who wilfully fails or refuses to report to the commissioner any insurance on subject matter located within this State placed under his name with nonadmitted insurers, or who, by wilful omission from the records required to be maintained by him for such purpose, attempts to evade the payment of taxes

on any such insurance, is, in addition to being required to pay the tax, together with a penalty equal in amount to the tax, guilty of a misdemeanor.

It is a misdemeanor for any surplus line broker or special lines' surplus line broker to accept or pay directly or indirectly any consideration or remuneration for or in connection with the placing of insurance which, if done by a person within this State, is governed by the provisions of this chapter, when such placing was not done by a person licensed therefor pursuant to this chapter.

It is a misdemeanor for any agent or broker to solicit, negotiate or effect any insurance governed by the provisions of this chapter in nonadmitted insurers, except by and through a surplus-line broker or special lines' surplus line broker licensed pursuant to this chapter. Except in the case of insurance specified in paragraph (b) of section 1760.5, it is a misdemeanor for any surplus line broker or special lines' surplus line broker to accept, place, pay, or permit the payment of commission or other remuneration on insurance placed by him under authority of his license to any person other than one holding a license to act as an insurance agent, insurance broker, surplus line broker, or special lines' surplus line broker, except that such business may be accepted by such surplus line broker or special lines' surplus line broker directly from an assured or other person who would likewise be entitled to place the same directly with an admitted insurer without the solicitation, negotiation or effecting thereof by an insurance agent or broker.

The commissioner may deny, suspend or revoke any license issued pursuant to this code if he finds after proper notice and hearing that the licensee has violated any provision of this section.

The permission granted in this chapter to place any insurance in a nonadmitted insurer shall not be deemed or construed to authorize any such insurer to do business in this State.

(Amended by Stats. 1937, Ch. 729.)

Sec. 1777. The following acts shall constitute a termination of the authority of a surplus line broker, and shall constitute revocation of his license, whether or not the commissioner formally revokes the same:

(a) The removal of the broker's office from this State.

(b) The removal of the accounts of his business from this State.

(c) The closing of his office for a period of more than twenty consecutive days.

(d) Wilful failure or refusal to perform any of the other duties specified in this chapter.

Sec. 1778. When a surplus line broker's license is revoked for any reason other than the insufficiency of his sureties a new license shall not be issued to him within one year after such revocation and until all indebtedness of the broker on former business has been paid to the commissioner.

Sec. 1779. Every insured for whom insurance has been effected with nonadmitted insurers shall, upon request in writing by the commissioner, produce for the commissioner's examination all policies, contracts, and other documents evidencing such insurance, and shall disclose to the commissioner the amount of the gross premiums paid or agreed to be paid for such insurance. For refusal to obey such request, such insured shall forfeit to the State of California the sum of two hundred dollars for each refusal.

Sec. 10818. On and after January 1, 1940, no new insurer may be organized or admitted to operate under this chapter. Nothing herein contained shall prohibit an insurer theretofore existing under or by virtue of this chapter from transforming to an insurer operating under the provisions of Chapter 9a of this part nor shall anything herein contained prohibit an association now operating under Chapter 8 of this part from transforming to an insurer operating under this chapter at times and in the manner provided in Chapter 8. Any corporation formed pursuant to section 10815, which prior to January 1, 1940, exhibits proof satisfactory to the commissioner that it has procured one hundred subscribers or applicants who have each paid the required initial premium, and which also deposits with the commissioner on or before January 1, 1940, the sum of $1,000 as a payment on its statutory deposit, may be admitted on completion of its organization and statutory deposit on or before July 1, 1940.

(Repealed by Stats. 1935, Ch. 282; added by Stats. 1939, Ch. 327.)

FILE COPY

In the Supreme Court

OF THE

United States

Supreme Court, U. S.
FILED
JAN 2 1946
CHARLES ELMORE CROPLEY
CLERK

OCTOBER TERM, 1945

No. 274

F.-O. ROBERTSON,
Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

BRIEF FOR APPELLEE.

Appeal from the Superior Court of the State of California, in and for the County of Ventura.

M. ARTHUR WAITE,
District Attorney of Ventura County, State of California.
JULIEN G. HATHAWAY,
Deputy District Attorney of Ventura County, State of California.
ROBERT W. KENNY,
Attorney General of the State of California.
T. A. WESTPHAL, JR.,
Deputy Attorney General of the State of California.
HAROLD B. HAAS,
Deputy Attorney General of the State of California.
Attorneys for Appellee.

H. F. ORR,
Ventura, California.
Of Counsel.

Subject Index

	Page
Statement of the Case	1
Argument	4
Statues Involved	4
I.	
The federal questions before this court	4
II.	
The Southeastern Underwriters case did not invalidate state laws regulating the conduct of the business of insurance	5
III.	
Section 1642 of the California Insurance Code is a valid exercise of the police power of the State of California	6
IV.	
Section 703(a) of the California Insurance Code is a valid exercise of the police power of the State of California	10
V.	
The California statutes here involved do not discriminate against interstate commerce	18
VI.	
The provisions of the California Insurance Code under which the society for which appellant acted is excluded from admission to do business in California are valid exercises of the police power of the State of California	19
VII.	
Congress has shown that its intention always has been and continues to be, until Congress shall otherwise specifically enact, that the states may regulate and tax the business of insurance	43
Conclusion	49

Table of Authorities Cited

Cases	Pages
Bradley v. Pub. Util. Comm. (1933) 289 U. S. 92	7, 15
California v. Thompson (1941) 313 U. S. 109	7, 9, 10
Caminetti v. Guaranty Union Life Ins. Co. (1942) 52 Cal. App. (2d) 330, 126 Pac. (2d) 159	35
Caminetti v. State Mutual Life Insurance Co. (1942) 52 Cal. App. (2d) 321, 126 Pac. (2d) 165	35
Caminetti v. National Guaranty Life Ins. Co. (1942) 52 Cal. App. (2d) 835, 126 Pac. (2d) 170	35
Concordia Ins. Co. v. Illinois (1934) 292 U. S. 535	10
Cooley v. Board of Wardens of the Port of Philadelphia (1851) 12 How. 299	43
Duckworth v. Arkansas (1941) 314 U. S. 390	7, 15
German Alliance Ins. Co. v. Lewis (1914) 233 U. S. 389	6, 13, 38
Hadacheck v. Sebastian (1915) 239 U. S. 394	38
Hall v. Geiger-Jones Co. (1917) 242 U. S. 539	9
Hartford Accident & Indemnity Co. v. Illinois (1936) 298 U. S. 155	7
Hoopeston Canning Co. v. Cullen (1943) 318 U. S. 313	13, 14
International Shoe Co. v. Washington, decided December 3, 1945, No. 107, O. T. 1945	14, 47
LaTourette v. McMaster (1919) 248 U. S. 465	6, 13, 38
Lincoln National Life Ins. Co. v. Read (1945) ..... U. S. ....., 89 L. Ed. 1250	14
McCulloch v. Maryland (1819) 4 Wheat. 316	37
Missouri v. Kansas Natural Gas Co. (1924) 265 U. S. 298	43
National Ins. Co. v. Wanberg (1922) 260 U. S. 71	6, 13, 38
O'Gorman & Young v. Hartf'd Ins. Co. (1931) 282 U. S. 251	14
Osborn v. Ozlin (1940) 310 U. S. 53	6, 13, 38

Pages

Parker v. Brown (1943) 317 U. S. 341 ..... 39, 40
People v. Merrill, 24 Cal. App. 206 14
Portnoy v. Superior Court, 20 Cal. (2d) 375, 125 P. (2d) 487 3

Robbins v. Shelby County Taxing District (1887) 120 U. S. 489 43

S. C. Hwy. Dept. v. Barnwell Bros. (1938) 303 U. S. 177 39
Simpson v. Shepard (1913) 230 U. S. 352 ..... 44, 45
Southern Pac. Co. v. Ariz. (June 18, 1945) ..... U. S. ....., 65 S. Ct. 1515 ..... 11, 39, 48
State Farm etc. Ins. Co. v. Carpenter, 31 C. A. (2d) 178 14
State Farm Mutual Ins. Co. v. Duel (1945) 324 U. S. 154 13

U. S. v. Southeastern Underwriters Assn. (1944) 322 U. S. 533 ..... 5, 7, 14, 39, 41, 45, 50
Union Brokerage Co. v. Jensen (1944) 322 U. S. 202 ..... 7, 14, 39

West v. Kansas Natural Gas Co. (1911) 221 U. S. 229 43

Codes

Civil Code:
Sections 437-452h 24
Sections 453d-453t 24

Insurance Code:
Section 36 23
Section 700 22
Section 703 1
Section 703(a) 1, 4, 5, 10, 12, 18
Section 730 et seq. 18
Section 736 18
Section 900 et seq. 18
Section 1639 6
Section 1642 ..... 2, 4, 5, 6, 9
Section 1643 6
Section 1648.5 6
Section 1674 6
Section 1678 6
Section 1760 20

Pag

Sections 1760.5, 1763, 1775.5, 1776.....
Section 1765.....
Section 1775.5.....13,
Section 10490, et seq.....
Section 10510.....
Sections 10739, 10740.....
Sections 10739-10744.....
Section 10810.....20,
Section 10818.....19, 21, 27, 31, 37,
Section 10870.....
Sections 10950 to 10953.12.....

California Statutes

Cal. Stats. 1907, p. 146.....
Cal. Stats. 1911, pp. 1270-1271.....
Cal. Stats. 1937, p. 2033.....

Stats 1935, pp. 667, 678.....30,
Stats. 1935, ch. 283, pp. 1002, 657.....
Stats. 1937, ch. 726, p. 2024.....
Stats. 1937, p. 1666.....
Stats. 1939, ch. 321, p. 1609.....31,

Federal Statutes

59 Stat. 33.....45,

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1945

No. 274

F. O. ROBERTSON,
Appellant,
vs.
THE PEOPLE OF THE STATE OF CALIFORNIA.

BRIEF FOR APPELLEE.

Appeal from the Superior Court of the State of California, in and for the County of Ventura.

STATEMENT OF THE CASE.

The facts stated in appellant's brief are incomplete.

This case arose upon a complaint in the Justice's Court of Ventura Township, California, charging appellant, in two counts, (1) with acting without a license as an agent for an insurer not admitted to do business in California, in soliciting and selling a policy contrary to §703(a) of the Insurance Code of California,[1] and (2) with soliciting and selling a policy of insurance without being licensed

[1]Deering's California Codes, Insurance Code of California, §703.

to act as an insurance agent or solicitor, contrary to th provisions of §1642 of the Insurance Code of California.

These sections provide:

"703. Except when performed by a surplus lin broker, the following acts are misdemeanors whe done in this State:

(a) Acting as agent for a nonadmitted insurer i the transaction of insurance business in this State."

"1642. A person shall not act as an insuranc agent, broker or solicitor until a license is obtaine from the Commissioner, authorizing such person s to act."

The testimony at the trial established that A. J. O'Lein a resident of Ventura, California, received a postal car through the mails from the First National Benefit Societ of Phoenix, Arizona (R. 7, 25). The card was an ordinar business reply card bearing a printed request to sen details of the Society's "Gold Seal" policies. Mr. O'Lei signed and mailed the card to the Society (R. 7).

Thereafter, appellant, a resident of California (R. 27 28), called at Mr. O'Lein's home, stated that he had re ceived the inquiry card and that he represented th Society (R. 7-8). He was invited into the house, sat down produced a form of policy in the Society, and proceede to perform the usual services of an insurance agent o solicitor (R. 9, 20); that is to say, he explained the term of the policy, its benefits, its costs; "he explained th insurance policies as any insurance man would and don't know,—I was hard to convince" (R. 9, 20). Havin persuaded the O'Leins to buy policies, he filled out th application blanks for their signatures (R. 17, 20), fille

out and gave to each a receipt for the initial membership fee or premium (R. 11, 17, 20), received a check payable to himself for the initial premium on both policies (R. 10), and later cashed this check in a local bank and received the proceeds (R. 10).

Thereafter the O'Leins each received a policy by mail from the Benefit Society (R. 12, 17-18).[2]

The evidence further established that the Society was not an insurance company admitted to do business in California (R. 22); that appellant had no license of any kind to act as an insurance agent, solicitor, or broker in California (R. 22).

Appellant was found guilty and sentenced to pay a fine of $100 on each count (R. 38). He appealed to the Superior Court of Ventura County, alleging that sections 703(a) and 1642 of the California Insurance Code are invalid under the Commerce Clause and the Fourteenth Amendment of the Federal Constitution.[3] That Court affirmed the judgment (Opinion, R. 41; Judgment, R. 44), and, being the State Court of last resort in cases of this type (*Portnoy v. Superior Court*, 20 Cal. (2d) 375, 125 P. (2d) 487), the appeal to this Court followed.

---

[2]The postal card, check, receipts and policies are in evidence (R. 25-34). No witnesses were called or documentary evidence produced by appellant.

[3]Appellant mentioned the Fourteenth Amendment in his appeal in the Court below (R. 4), and in his specifications of errors in this Court (Appellant's Opening Brief, 9). However, no question under the Fourteenth Amendment was urged or passed upon in the Court below, and appellant's brief in this Court not only confines its argument to the Commerce Clause, but is specific that any other point is abandoned (Appellant's Opening Brief, 36-37).

STATUTES INVOLVED.

The statutes, the validity of which is involved, are sections 703(a) and 1642 of the California Insurance Code, above quoted (Deering's California Codes, Insurance Code of California, §§703(a) and 1642). Other related statutory provisions are printed in the Appendix to this brief.

ARGUMENT.

I.

THE FEDERAL QUESTIONS BEFORE THIS COURT.

It is important at the outset to define the federal questions before the Court on this appeal. Appellant's brief argues in general the invalidity of the California Insurance Code and refers to a number of sections not involved in this appeal. The Insurance Code of California is a comprehensive document hundreds of pages long. This Code has been built up for the protection of the people of California over a period of more than eighty years. It is the result of the action of many legislatures that have been carefully and comprehensively informed by the study of experts, the painstaking annual reports of the State Insurance Commissioner and his staff, and the experience of the people. Appellee is confident that none of the provisions of the Code infringes the Federal Constitution or laws.

However the sole question before this Court in the case at bar is whether two of the sections of this Code are in violation of the Commerce Clause of the Federal Constitution as applied to the facts in this record. These two

sections simply require (§1642) that no person shall act as an insurance agent or solicitor until he has obtained a license so to act, and (§703(a)) that no person shall act as an agent for an insurer not admitted to do business in California unless he is licensed as a surplus line broker.

II.

THE SOUTHEASTERN UNDERWRITERS CASE DID NOT INVALIDATE STATE LAWS REGULATING THE CONDUCT OF THE BUSINESS OF INSURANCE.

At the outset of this brief it is also important to point out that the constitutionality of statutes regulating insurance, similar to the statutes involved in the case at bar, has been sustained by this Court over and over again in adjudications extending over many years. Appellant's contentions herein are based solely upon the proposition that *U. S. v. Southeastern Underwriters Assn.* (1944) 322 U. S. 533, invalidated state laws regulating the conduct of the business of insurance. The opinion of this Court in that case is a complete answer. It specifically and emphatically states that its decision has no such effect, and it carefully reviews and approves the very principles under which such regulatory statutes are valid as appropriate exercises of the police power of the states. (See the discussion of the *Southeastern Underwriters* case at page 41 et seq. of this brief.)

III.

§1642 OF THE CALIFORNIA INSURANCE CODE IS A VALI EXERCISE OF THE POLICE POWER OF THE STATE O CALIFORNIA.

In the appendix to this brief we quote pertinent pr visions of the California Insurance Code[4] relating to th license requirement provision of §1642. The purpose of th law was declared by the legislature: "to protect the publi by requiring and maintaining professional standards conduct on the part of all insurance agents" (§1639). Th requirements for obtaining a license are, simply, that a application shall be made on a written form prescribed b the Commissioner describing the kinds of insurance whic the applicant desires to transact (§1643); the applican must be a citizen or one who has applied for citizenshi and must have reached his majority (§1648.5); he mus pass an examination as to his qualifications (§1674) an pay a filing fee of $4 and an examination fee of $5 (§1678 Upon completing these requirements the license is issue if the Commissioner is satisfied that the applicant is prop erly qualified and intends in good faith to carry on th business (§1649). The statute applies without discrimina tion to every agent, regardless whether he transacts bus ness for a domestic or a foreign insurer. It is exactl what it appears to be: a statute designed to safeguar the members of the public from misinformation, frau and overreaching in effecting insurance—a business lon held to be one affected by a public interest and so closel related to the public welfare as to invoke and requir meticulous governmental regulation.[5]

---

[4]Appendix, pp. i to v.

[5]*German Alliance Ins. Co. v. Lewis* (Kansas 1914) 233 U. S. 38 412, 415;
LaTourette v. McMaster (1919) 248 U. S. 465, 467;
National Ins. Co. v. Wanberg (1922) 260 U. S. 71, 73;
Osborn v. Ozlin (1940) 310 U. S. 53, 65-66.

Regardless of what may be the scope of *U. S. v. Southeastern Underwriters Assn.* (1944) 322 U. S. 533, the validity of such provisions does not present a substantial federal question.

California v. Thompson (1941) 313 U. S. 109;
Union Brokerage Co. v. Jensen (1944) 322 U. S. 202;
Hartford Accident & Indemnity Co. v. Illinois (1936) 298 U. S. 155;
Duckworth v. Arkansas (1941) 314 U. S. 390;
Bradley v. Pub. Util. Comm. (1933) 289 U. S. 92.

California v. Thompson, supra, involved the validity of a statute of California—indistinguishable in principle from the licensing statute involved in the case at bar—requiring the licensing of transportation agents negotiating for interstate transportation. This Court pointed out that the statute in question (pp. 112-113)

> "* * * is not shown to be other than what on its face it appears to be, a measure to safeguard the members of the public desiring to secure transportation by motor vehicle, who are peculiarly unable to protect themselves from fraud and overreaching of those engaged in a business notoriously subject to those abuses."

The Court then reviewed the applicable principles of law (pp. 113-114):

> "As this Court has often had occasion to point out, the Commerce Clause, in conferring on Congress power to regulate commerce, did not wholly withdraw from the states the power to regulate matters of local concern with respect to which Congress has

not exercised its power, even though the regulation affects interstate commerce. * * * it has been recognized that there are matters of local concern, the regulation of which unavoidably involves some regulation of interstate commerce, but which because of their local character and their number and diversity may never be adequately dealt with by Congress. Because of their local character, also, there is wide scope for local regulation without impairing the uniformity of control of the national commerce in matters of national concern and without materially obstructing the free flow of commerce which were the principal objects sought to be secured by the Commerce Clause. Notwithstanding the Commerce Clause, such regulation in the absence of Congressional action has, for the most part, been left to the states by the decisions of this Court, subject only to other applicable constitutional restraints. * * *

Where, as here, Congress has not entered the field, a state may pass inspection laws and regulations, applicable to articles of interstate commerce, designed to safeguard the inhabitants of the state from fraud, provided only that the regulation neither discriminates against nor substantially obstructs the commerce."

And the Court pointed out that such regulation by the state clearly is valid in the absence of specific Congressional regulation (p. 115):

"Fraudulent or unconscionable conduct of those so engaged which is injurious to their patrons, is peculiarly a subject of local concern and the appropriate subject of local regulation. In every practical sense regulation of such conduct is beyond the effective reach of Congressional action. Unless some measure of local control is permissible, it must go largely un-

regulated. In any case, until Congress undertakes its regulation, we can find no adequate basis for saying that the Constitution, interpreted as a working instrument of government, has foreclosed regulation, such as the present, by local authority."

Each of the other decisions cited above is equally pertinent and demonstrates the complete want of merit in appellant's attack upon section 1642. That section, like the licensing provisions involved in the *Thompson* case, is simply a nondiscriminatory measure, designed to safeguard the members of the public in a matter of vital public interest.

Compare *Hall v. Geiger-Jones Co.* (1917), 242 U. S. 539.

The facts in the instant case illustrate the appropriateness of such regulation. Appellant appeared at the home of California citizens in the capacity of an insurance agent or solicitor. Contrary to appellant's statement (Appellant's Opening Brief, 22), his activities went far beyond the mere "filling in of the application." He "explained the insurance policies as any insurance man would" (R. 9); explained the "benefits of the policy" (R. 20); received premium payments in a check made out to his order and cashed that check over his personal endorsement (R. 10). The O'Leins, under the law of California, were warranted in assuming that he was qualified to act as an agent in this transaction—competently and honestly. State regulation of such activities clearly is valid under the foregoing decisions.

IV.

SECTION 703(a) OF THE CALIFORNIA INSURANCE CODE I A VALID EXERCISE OF THE POLICE POWER OF TH STATE OF CALIFORNIA.

The situation with respect to §703 (a) is identical i all substantial respects with that obtaining in respect t §1642 discussed above. The provisions of the Californi statutes related to §703(a) are copied in the Appendix p. v et seq. The Insurance Code makes it a misdemeano for any person to act as an agent for nonadmitted insurer in the transaction of insurance business in Californi unless he shall first have obtained a surplus line broker' license (section 703(a)). Upon application this license i issued by the Commissioner if he finds that the applican is "trustworthy and competent to transact an insuranc brokerage business in such manner as to safeguard th interest of the insured" (section 1765), and upon the de livery to the Commissioner of a faithful performance bon in the sum of $5,000 and a filing fee of $50 (section 1765). The requirement of such a bond was expressly approved in *California v. Thompson* (1941) 313 U. S. 109, quoted supra at page 7. While the $50 filing fee is larger than the $4 fee required of an agent transacting business for admitted insurers (section 1678), it obviously is not dis proportionate to the expenses of administration. (See page 16, et seq. of this brief.)

In any event, appellant has failed to show that there is any discrimination.[6] He contends merely that the stat-

[6] "By reason of the presumption of validity which attends legislative and official action one who alleges an unreasonable discrimination must carry the burden of showing it" (*Concordia Ins. Co. v. Illinois* (1934) 292 U.S. 535.

ute is void on its face. The decisions cited in the preceding subdivision of this brief are clearly to the contrary.

Appellant also refers to the provisions of §§1763 and 1775.5. We are not certain from appellant's general reference to these sections (Appellant's Opening Brief, 30) whether their validity is intended to be argued or attacked in the brief, but if so any such contention is without merit.

Section 1763 (Appendix, p. v) provides in substance that insurance can be effected with nonadmitted insurers (unless effected directly between the insurer and the insured—see page 13 of this brief) only if it is so-called "surplus line insurance," that is, insurance which cannot be procured from a majority of the admitted insurers, and is not placed with the nonadmitted insurer for the purpose of procuring a rate lower than that which will be accepted by any admitted insurer.

The constitutionality of this section was neither challenged in, nor considered nor passed upon by, either Court below. Nor was its validity necessarily involved in the decision. So far as this record shows, the life insurance sought to be effected in this case might or might not have been procurable from admitted insurers. Indeed, in so far as the record has any bearing on the point, there is a suggestion that the insurance would not have been so procurable and appellant himself so infers.[7] If this

---

"• • • in their application state laws will not be invalidated without the support of 'relevant factual material which will afford a sure basis' for an informed judgment" (*Southern Pac. Co. v. State of Arizona* (June 18, 1945) U.S. , 65 S.Ct. 1515).

[7]Appellant's Opening Brief, 6, 13.

were so, the insurance would have fallen within the surplus line exception and appellant, had he obtained the license, could have acted as agent in the transaction. Accordingly, so far as this record shows, §1763 in no way has been applied to appellant or his business, and its validity, not challenged in the Courts below, is not involved in this case.

While the validity of this provision is not before this Court, we wish to emphasize that no basis exists for appellant's criticism (Appellant's Opening Brief, 32-33). The statute is designed (1) to make available to the public insurance not ordinarily written and, in particular, not available from admitted companies, but at the same time (2) to protect the insuring public from fly-by-night companies who are not required to conform to the financial and other safety requirements of the state laws, and who, therefore, seek to sell unsafe insurance at unsound rates. Most of these cut-rate policies contain the deceptive small type printed provisions for additional assessments.[8]

In so far as this phase of the matter is concerned, Section 703(a) of the Insurance Code is obviously designed to protect the people of California from having to deal with agents who have not, and whose companies have not, met the standards that the California legislature has set as to solvency, integrity of policy contracts, and related matters directly affecting the public welfare. Maintenance of these standards is clearly within the police power of the state.

---

[8]See the policy in this case, third paragraph of printed "Additional Provisions." R. 31.

See,

German Alliance Ins. Co. v. Lewis (1914) 233 U. S. 389;

LaTourette v. McMaster (1919) 248 U. S. 465;

National Ins. Co. v. Wanberg (1922) 260 U. S. 71;

Osborn v. Ozlin (1940) 310 U. S. 53;

Hoopeston Canning Co. v. Cullen (1943) 318 U. S. 313;

State Farm Mutual Ins. Co. v. Duel (1945) 324 U. S. 154.

This proposition is further discussed, and the justification for California's regulatory statutes demonstrated, under Heading VI of this brief. (page 19 et seq.)

Further, in this connection, we emphasize that California has no prohibition against any nonadmitted company effecting any type of insurance, provided it is negotiated directly between the citizen and the company (§1760). The restrictions in the law apply only to the types of insurance which may be effected by *agents*. The appropriate exercise of the police power in this regard is evident. The ordinary citizen, confused by the complicated and multiple provisions of insurance policies, ordinarily relies upon the representations of the agent, in the absence of which he might himself examine and analyze the policy. The agent, if unscrupulous, is therefore in a position easily to deceive and defraud the public.

Turning to the provisions of §1775.5 (Appendix, p. vii), this section imposes upon the business of a surplus lines broker a tax, payable each July 1, equal to three per cent of the gross premiums upon business done by him during each calendar year. The validity of this provision, also;

is not before the Court in this case. It was neither challenged in, nor considered or passed upon by, either Court below. The sole statute here involved is the one which requires appellant to obtain a license, upon the payment of a nominal fee and the successful completion of an examination as to honesty and competency. Neither §1775.3 nor any other section of the Code imposes upon him a tax in connection with obtaining that license. If after obtaining such license and, at the close of the next fiscal year, a tax under §1775.5 becomes payable, the law of California provides an adequate remedy by suit in the California Courts.[9] In such suit appellant may raise any question he desires concerning the validity of such tax. That question may then be determined on the basis of the application of the statute to the pertinent facts. It is clear, we believe, under the decision of this Court in *U. S. v. Southeastern Underwriters Association* (1944) 322 U. S. 533, and under the provisions of Public Law No. 15,[10] that the validity of such taxes will be subject to no substantial challenge, but challenge, nevertheless, will be fully open to appellant. It may be that the validity of the tax will be affected by numerous facts and circumstances yet to occur (compare *Hoopeston Co. v. Cullen* (1943) 318 U. S. 313; *Union Brokerage C. v. Jensen* (1944) 322 U. S. 202; *International Shoe Co. v. Washington*, No. 107, O.T., 1945, decided December 3, 1945; *O'Gorman & Young v. Hartf'd Ins. Co.* (1931) 282 U. S. 251, 257-258). The question is not one which can be anticipated and decided abstractly upon the

---

[9] *State Farm etc. Ins. Co. v. Carpenter*, 31 C.A. (2d) 178; *People v. Merrill*, 24 Cal. App. 206. Compare *Lincoln National Life Ins. Co. v. Read* (1945) ... U.S. ..., 89 L. Ed. 1250.

[10] Page 46 of this brief.

face of the statute alone; it is not properly before the Court on this appeal.

Further, until appellant has applied for and obtained a license it cannot be known whether any tax question or any other question under California statutes referred to by appellant, ever will arise. The license might be denied for incompetence or lack of trustworthiness (§1765). If such were the grounds of denial, supported by substantial evidence, no possible violation of the Commerce Clause would be involved.

> "The Commerce Clause is not violated by denial of the certificate to the appellant, if upon adequate evidence denial is deemed necessary to promote the public safety." (*Bradley v. Pub. Util. Comm'n* (1933) 289 U. S. 92, 96.)

And see,

Duckworth v. Arkansas (1941) 314 U. S. 390, 393-394.

Aside from the foregoing, we submit that the tax clearly is valid—either under Public Law No. 15[11] or quite apart from its provisions. The incidence of the tax is upon activities carried on in the State of California, in this case by a California resident. It is nondiscriminatory as compared to taxes imposed upon admitted companies, both foreign and domestic. Section 14¼ of Article XIII of the Constitution of California added to the Constitution November 3, 1942 (Statutes of California, 1943, pp. civ-cvi), imposes an annual tax upon admitted insurers, domestic or foreign, in respect of business done in Cali-

[11] Page 46 of this brief.

fornia subsequent to December 31, 1942. The tax is at a rate of 2.55 per cent for 1943 and lower percentages for succeeding years down to 2.35 per cent for 1947 and succeeding years, upon the amount of gross premiums upon business done in the state in the year. This tax is in addition to the taxes upon the real estate of such insurers (Constitution of California, Article XIII, §14⅘ (i) (1); Article XIII, §1). Subject to certain limitations, a fraction of the insurer's real estate taxes is deductible from this annual tax, but it is provided that this deduction shall diminish progressively to zero when the annual tax reaches the minimum in 1947 (Article XIII, §14⅘ (h)).

It is clear, moreover, that an exaction in an additional amount upon surplus line brokers as compared with domestic and admitted companies is warranted as an administrative charge to compensate the State for the greatly increased burden thrown on the State Insurance Department in connection with the supervision of unauthorized insurance. Under statutes enacted in 1907 it was required that an affidavit be executed and filed with the Insurance Commissioner in connection with every risk written in an unauthorized company (Cal. Stats. 1907, p. 146). In 1911 the act was amended to require a report to be submitted within one week of the procurement of the insurance (Cal. Stats. 1911, pp. 1270-1271). In 1937 there was a general revision of the California statutory provisions governing the operation of surplus line insurance (Cal. Stats. 1937, p. 2033, amending various sections of the Insurance Code and adding sections thereto), which threw a number of discretionary duties on the Insurance Commissioner, further changed the reporting system and amplified the various enforcement provisions, in addition

to giving the Comissioner rule-making power (Insurance Code, §§1760.5, 1763, 1775.5 and 1776 as amended by Cal. Stats. 1937, p. 2033).

Some picture of the burden thrown on the Insurance Department by the necessity, from 1907 to 1937, of examining statements of individual risks procured (or affidavits) in the case of surplus line insurance, may be visualized if one considers that in 1909 the premiums charged for surplus line marine insurance amounted to $45,632.48, whereas the marine insurance premiums in the authorized companies amounted to $1,952,269.99; but that for each surplus line marine risk an affidavit or statement had to be filed under the law and, for the protection of the public, examined by the Insurance Commissioner's Office, whereas, in the case of marine insurance placed in the authorized companies, having premiums over forty times greater in amount, no examination of the policy form or of the risk by the Insurance Commissioner was required (Forty-third Annual Report of the Insurance Commissioner, State of California, p. 9). Similar figures for the same year for fire insurance premiums were $217,419.60 for surplus line fire insurance as against approximately $15,094,210.60 for authorized fire insurance (Ibid., pp. 7-8). The premiums for the entire unauthorized insurance business placed from the State of California have seldom amounted to as much as one per cent of the business placed in authorized companies and yet the Insurance Commissioner has been obliged to examine a report on each risk, whereas there was no such requirement or necessity in the case of business of the authorized insurers. The business of the latter was submitted in tabular form on the annual statements

filed each year under §900 et seq., of the California Insurance Code, and the Commissioner by his routine examinations (Insurance Code, §730 et seq.) and the "convention" examinations under the auspices of the National Association of Insurance Commissioners, the expense of which was borne by the insurance companies (Insurance Code, §736) was enabled expeditiously to meet the requirements of supervision.

V.

THE CALIFORNIA STATUTES HERE INVOLVED DO NOT DISCRIMINATE AGAINST INTERSTATE COMMERCE.

Neither of the California licensing statutes here involved, nor any other of the California insurance laws referred to by appellant, are in any way discriminatory, but on the contrary they apply equally to foreign and domestic insurers and their agents. As pointed out above, §1642 of the Insurance Code requires that all persons acting as insurance agents, brokers or solicitors shall comply with the licensing provisions, regardless whether they represent or act for a foreign or a domestic insurer. The licensing requirement of §703(a) likewise is nondiscriminatory. The additional nominal requirements of a faithful performance bond and a fee of $50 are directly related to the supervision, and the cost thereof, of business placed with nonadmitted insurers. (See page 16 et seq. of this brief.) The statutory requirement in operation merely places persons acting for such insurers on the same basis as those who act for admitted insurers, foreign and domestic.

So, likewise, the solvency statutes of California, referred to in the next subdivision of this brief merely exact from foreign insurers the identical standards of integrity and fair dealing required of domestic insurers. (See page 23 et seq. of this brief.)

Appellant seeks in effect to obtain a ruling which will result in a foreign insurer having an advantage over domestic insurers. Certainly if California regulatory statutes, enacted for the public welfare in the exercise of the state's police power, are binding on domestic companies, while foreign companies and their agents may operate in California with impunity, then there is discrimination, but in favor of appellant.

VI.

THE PROVISIONS OF THE CALIFORNIA INSURANCE CODE UNDER WHICH THE SOCIETY FOR WHICH APPELLANT ACTED IS EXCLUDED FROM ADMISSION TO DO BUSINESS IN CALIFORNIA ARE VALID EXERCISES OF THE POLICE POWER OF THE STATE OF CALIFORNIA.

Appellant contends that the provisions of §10818 of the California Insurance Code (Appendix, p. viii) constitute a prohibition against his assisting in California in any transaction for the Society for which he acted.

A complete answer to this argument is that the validity of § 10818 was not challenged in, nor considered or passed upon by either court below. As we have shown the licensing provisions, for the violation of which appellant was convicted, are valid. This case does not involve the right of appellant to transact business as an *insurer* in California. In this connection we point again to the provisions

of § 1760 of the Insurance Code, which provides that any nonadmitted insurer may negotiate and effect insurance of any kind with a citizen of California. This applies to the Society for which appellant acted. The only prohibition is against appellant's acting as an *agent* in transacting that insurance within California, and we have shown that the statutes here challenged as applied to him, are valid.

Nevertheless, the question thus presented is of importance and we desire to meet it on the merits in so far as it lies within the jurisdiction of this Court.

The solicitation and sale for which appellant was convicted in this case were in behalf of the First National Benefit Society, which in its application for membership form (R. 29, 32) and policy form ("Gold Seal" Single Life Certificate, R. 30, 33) describes itself as a nonprofit cooperative corporation (R. 30), and a mutual benefit corporation (sixth paragraph, "Additional Provisions," R. 31).

It is apparent from the certificate of membership or policy issued to the insurer that the Benefit Society comes within the provisions of Section 10810 of the California Insurance Code (Appendix, p. vii), in that its policy is "* * * conditioned not upon fixed payments but upon the collection from time to time of stipulated premiums with provision requiring additional payments from insured members by assessment * * *" (third paragraph, "Additional Provisions," R. 31). This section limits the business of such insurance and the issuance of such contracts of insurance in the State of California to domestic corporations duly organized, and to foreign corporations duly

admitted, under Chapter 9 of the California Insurance Code, of which § 10810 is a part. This section provides:

> "Every contract whereby a benefit is to accrue to a person named therein through the death of the insured, or his physical disability from accident or sickness, or for the payment of any sum of money as an annuity or endowment, if the benefit is conditioned, not upon fixed payments but upon the collection from time to time of stipulated premiums with provision requiring additional payments from insured members by assessment, shall be a contract of mutual insurance on the stipulated premium plan; and the business involving the issuance of such contracts shall be carried on in this State only by duly organized corporations subject to this chapter."

Section 10818 (also a part of Chapter 9) prohibits the formation of new companies in California or further admission of foreign companies coming within the scope of Chapter 9, on and after January 1, 1940. This section provides:

> "On and after January 1, 1940, no new insurer may be organized or admitted to operate under this chapter. Nothing herein contained shall prohibit an insurer theretofore existing under or by virtue of this chapter from transforming to an insurer operating under the provisions of Chapter 9a of this part nor shall anything herein contained prohibit an association now operating under Chapter 8 of this part from transforming to an insurer operating under this chapter at times and in the manner provided in Chapter 8. Any corporation formed pursuant to Section 10815, which, prior to January 1, 1940, exhibits proof satisfactory to the commissioner that it has procured 100 subscribers or applicants who have each paid the

> required initial premium, and which also deposits with the commissioner on or before January 1, 1940, the sum of one thousand dollars ($1,000) as a payment on its statutory deposit, may be admitted on completion of its organization and statutory deposit on or before July 1, 1940."

While neither foreign nor domestic companies of the type described in Chapter 9 may, since January 1, 1940, be formed, there is nothing to bar domestic or foreign companies from transacting insurance in California if they are of the type authorized by California, meet California standards, and secure a certificate of authority from the Insurance Commissioner. In this regard, Section 700 of the Insurance Code provides:

> "A person shall not transact any class of insurance business in this State without first being admitted for such class. Such admission is secured by procuring a certificate of authority from the commissioner. Such certificate shall not be granted until the applicant conforms to the requirements of this code and of the laws of this State prerequisite to its issue. After such issue the holder shall continue to comply with the requirements as to its business set forth in this code and in the laws of this State."

If any insurance company desires to transact life insurance in California, provision is made therefor by Section 10510, which is applicable alike to foreign and domestic insurers, and provides for the issuance of licenses to do business in California.

Section 10510 reads as follows:

> "An incorporated life insurer issuing policies on the reserve basis shall not transact life insurance in this

State unless it has a paid-in capital of at least two hundred thousand dollars ($200,000)."

Section 36 of the Insurance Code defines "paid-in capital" as including the surplus of a mutual insurer. The effect of the two sections is to require that a stock company have a capital stock aggregating at least $200,000 and that a mutual company have a surplus of at least $200,000 in order to do business in California.

In other words, California statutes provide that foreign *or* domestic companies cannot now do a life insurance business except on a legal reserve basis and there are no exceptions, whether foreign or domestic companies, except as to companies existing and doing such business in California prior to January 1, 1940. The policy behind these statutes is that experience has shown that a mutual company doing business on the stipulated premium plan with right of assessment, without a sufficient surplus and full reserves, is not adequately safeguarded to insure that money will be available to pay death benefits. However, California permits such companies, foreign or domestic, without discrimination, operating in California prior to January 1, 1940, to continue in business in order to avoid destroying these businesses then existing. As will be shown hereafter, legislation also provided means for operation under the general law when sufficient funds were accumulated, and procedure for accumulating these funds.

The history, basis and justification for this legislation, designed to protect the solvency of insurers dealing with California insurance policyholders, are clearly set forth in the law and the reports of the Insurance Commissioner

of the State. These matters are discussed in detail in th following pages of this brief, to and including page 37.

Prior to 1934, Chapters IV and VI of Title II, Part IV of Division First of the Civil Code of the State of Cali fornia contained the provisions for operation of "mutua life and benefit associations" (secs. 437-452h, Civil Code and "life, health, accident and annuity or endowment in surance on the assessment plan" (secs. 453d-453t, Civi Code): On page XVIII of the Sixty-seventh Annual Re port covering the business year 1934 of the Insurance Commissioner, State of California, is found the follow ing statement of the then Insurance Commissioner:

> "The property, business, offices, books and records o the following fifteen mutual life and benefit associa tions, all operating in the County of Los Angeles i this State and claiming exemption under 452f of th Civil Code, from certain laws regulating the trans action of insurance business, were seized by E. For rest Mitchell, as Insurance Commissioner, on Decem ber 11, 1934: (names of the associations follow).
>
> Seizure of a number of other associations of th same type was prevented by the removal of thei books, accounts and records, from the State."

Examination of pages XIV and XV of the same repor of the Insurance Commissioner shows that there were in corporated in and operating in the State of California a that time twenty-nine of these so-called mutual benefi and life associations with over $100,000,000 of insurance in force, but total admitted assets of somewhat ove $85,000 and an admitted excess of assets over liabilities *other than policy liabilities* (reserves), of $10,000. Ex

amination of the provisions of said Chapter IV will disclose that these companies were not required by statute to maintain any life insurance reserves at all. Further examination of the tables in the last mentioned pages of the Report indicates that these organizations collected a total of over $1,200,000 during the year, paid losses of only slightly over $500,000, and had unpaid claims of almost $500,000. Consultation of pages XVI and XVII of the same Report of the Commissioner shows nine so-called "Chapter VI life, health, accident and annuity or insurance on the assesment plan" corporations, with admitted assets of slightly over $1,000,000, liabilities other than reserve of over $300,000, and total liabilities, including reserves, of over $1,000,000.

However, as will be shown later by the history of the legislation, while these reserves in total exceeded legislative requirements, this was because there were no *compulsory* legislative reserve requirements; hence at the same time there was, upon the standard life insurance basis of the American Experience Tables, a large reserve deficiency. The history of the legislation thereafter shows a continuous attempt to remedy this and other vices and evils, and a continuous insurance departmental effort to prevail upon those types of corporations to run their businesses upon a sound basis and one fair to their insureds.

The next comment of importance appears on page XX of the Sixty-eighth Annual Report of the Insurance Commissioner, State of California, which covers the business year 1935:

"Another such amendment to the Code revised the provisions of law relating to mutual benefit associations doing the business of life insurance on the assessment plan. New provisions included regulation of certificate forms used by these associations, requirement of approval by the Commissioner of such forms before issue is permitted, adoption of uniform assessment bases and, for the first time in California, expressly prescribing standards of financial conditions to which such associations must conform. Agents of these associations were also placed under the licensing law. As a result of this legislation, the duty of examining every form of policy issued by these associations devolved upon the Commissioner's office.

The necessity of raising the standards of mutual life and disability insurers (Chapter VI companies) operating on a stipulated premium basis with provision for assessment, resulted in another such amendment governing the conduct of these insurers. Heretofore these insurers had been required merely to deposit assets amounting in value to $25,000.00, without adequate requirement as to maintenance of reserve on policies. Policy forms had been unregulated. Changes included requirements that assessment liability be expressly stated in the policies, that certain standard provisions must be included, that agents must be licensed, and that the forms of policies must be approved by the Commissioner. Under another new requirement these insurers must maintain reserves of prescribed standards on their policies hereafter issued. Again the result has been to place in the Commissioner's office the duty of examining the policies of these insurers to determine conformity with law."

The passage of the Insurance Code in 1935 had transferred the provisions relating to "Chapter IV" (mutual benefit and life associations) to Chapter 8 of Part 2 of Division 2, Insurance Code, and the provisions relating to life, accident, and annuity or endowment insurance on the assessment plan corporations (Chapter VI companies) to Chapter 9 of Part 2 of Division 2, Insurance Code.

These companies will hereafter be referred to as "Chapter 8" and "Chapter 9" companies. The Chapter 9 companies are of the type for which appellant sought to act in this case. Section 10818, Insurance Code, is a part of that Chapter 9. The amendments to the law to which the Commissioner referred in his Sixty-eighth Annual Report, above quoted, are contained in California Statutes 1935, pages 657-685, repealing the original and adding new Chapters 8 and 9 of Part 2, Division 2, Insurance Code.

A survey of the problem involved had been set forth two years before this legislation in the Sixty-sixth Annual Report of the Insurance Commissioner, State of California, covering the year ending December 31, 1933. The comments therein form a basis for an understanding of the statements made in the Sixty-eighth Annual Report above quoted:

> "The increased appreciation of life insurance protection developed during the decade after the war, coupled with restricted incomes in the recent period, has created an increased demand upon the regular companies for the cheaper less permanent forms of term insurance and increased the opportunities for those concerns offering various forms of assessment insurance. In particular there were formed many associations claiming to operate under section 452f of the

Civil Code and to be exempt from the jurisdiction of this office. They advertised extensively beyond our borders, and brought much question and criticism of California insurance laws and practices from those who remembered the disappointments suffered by those who in the '80's and '90's placed their insurance in the 'Keep your reserve in your pocket' fraternal orders. Some were so outspoken as to characterize such organizations as 'rackets'. Indeed, recently one group has been indicted by the Federal Grand Jury in Los Angeles County for misuse of the mails.

On March 8, 1934, the Attorney General rendered me an opinion under which few of these 'associations' could be held qualified under that section. A group brought injunction proceedings against my acting under that opinion, but on trial the court dissolved the injunction. This will afford some help for the poorer class of our citizens, but even yet it appears that the provisions of our laws relating to assessment life insurance do not afford adequate protection for those trying to provide insurance for their families in this way. The law should be strengthened to prevent the taking of risks without proper investigation and the later use of the defense of breach of warranty to defeat the claim—an all too common practice; to require prompt and regular levying of assessments to meet claims and prevent stalling off of claimants or paying in driblets; and to assure that the associations shall be honestly conducted in the interests of their members. *The laws referred to are Chapters IV and VI of Division I, Part IV, Title II of the Civil Code.*

In particular the powers and duties of this office with regard to them should be made plain. As it now

stands there is grave doubt what, if anything, we can do when a Chapter IV association, in order not to reduce its membership whose dues furnish the salaries of the officers, fails to levy assessments with sufficient frequency to pay claims currently and allows them to accumulate until in some cases more than a year elapses between the death of the insured and the payment to his beneficiary; or when the management of a Chapter VI corporation makes a general agency or management contract with a corporation composed of its own officers, giving them as much as 15 per cent of the premium income which gives that corporation in the neighborhood of $100,000 annually in addition to the liberal salaries paid the officers themselves, and generous commissions to agents as well as salaries to supervisors of agents. Amendments of the law in recent years have confused rather than clarified these chapters. This is one of the most acute problems before this division and the economic and social status of those who patronize these associations make their protection the more imperative." (Sixty-sixth Annual Report of the Insurance Commissioner, State of California, pp. 10, 11.) (Emphasis supplied.)

Some of the important provisions of this legislation are the provisions of Article 10 of the above Chapter 8, consisting of sections 10739 to 10744, inclusive, Insurance Code. In this connection it must be remembered that the 1935 legislation for the first time imposed definite life reserve requirements upon Chapter 9 companies. Life insurance thereafter written by the Chapter 9 companies would have *some* required reserves, although again, owing to the deficient condition of many of them, it was neces-

sary to provide a period of five years within which they might be accumulated. (Insurance Code, sec. 10870, as enacted by Statutes 1935, ch. 282.) The provisions of the new legislation in respect to mutual benefit associations (Chapter 8 companies), which required that their policies be truthful and that the form be scrutinized by the Insurance Commissioner before sale, made it desirable for these companies to be able to show that business written by them would have some reserves behind it. For that reason Sections 10739 and 10740 were added to the Insurance Code by Chapter 283 of the Statutes of 1935 to provide for installment accumulation of the sum, $25,000.00, necessary to transform the so-called "Chapter 8" companies which relied upon assessment only, into "Chapter 9" companies, which charged a fixed premium subject to assessment, and had some reserves behind their policies. Accordingly, in 1936 four such companies transformed (Sixty-ninth Annual Report of the Insurance Commissioner, State of California, p. XVIII), and five more transformed in 1937 (Seventieth Annual Report of the Insurance Commissioner, State of California, p. XVIII). Furthermore, in 1935, provision was made whereby these organizations could secure funds by a sort of junior loan for the purpose of gaining the funds necessary to provide proper security for their policyholders. (Stats. 1935, pp. 667, 678.)

However, the essential unsoundness resulting from operation on such a small capital under a law which required that the policies be examined to eliminate misleading statements or misrepresentations and that some financial requirements be met, even though much less stringent than

generally the case with regard to reserve life insurance, led to a demand for similar transformation and provisions for more quickly securing the necessary capital to properly run an insurance company. The result was the enactment in 1939 of Chapter 321, adding sections 10950 to 10953.12 to the Insurance Code (Cal. Stats. 1939, p. 1609). These sections provided for procurement of capital from outside sources as capital stock in the case of Chapter 9 companies then existing, the thought being that either by securing advances under the 1935 statutes, or by selling stock under these sections, they would eventually qualify on the usual standard reserve basis for life insurance. At the same time the addition of Chapter 327 to the statutes (Stats. 1937, p. 1666) included the Section 10818 complained of by appellant to prevent the formation or operation in the State of California of any more life or accident organizations with deficient capital. (Seventy-first Annual Report of the Insurance Commissioner, State of California, p. XXIX, digesting the legislation without comment.) This was effective both as to organizations foreign and domestic to California. However, there was at the time one Nebraska corporation which was then operating and continued to operate under the law thereafter. This corporation continued to operate under that law until April 23, 1940, when it transformed so as to qualify as a mutual reserve casualty company and was licensed accordingly. (Seventy-third Annual Report of the Insurance Commissioner, State of California, p. XVII.) The effect of this legislation is shown by the tables on pages XXIV to XXVII of the Seventy-second Annual Report of the Insurance Commissioner, State of California, which shows that during that year there remained but four so-called

Chapter 8 companies and twenty-nine Chapter 9 companies listed as operating in the State. One such company, above mentioned, was in process of arranging its transformation, and by reason of uncertainty as to whether it would be under the Chapter 9 law at the end of the year, it is not listed in the Report. The reason is indicated by the citation to the Seventy-third Annual Report last above.

However, the combination of lack of capital upon which these companies were operating, as will be shown by a glance at the figures summarized from the balance sheets of these companies in any of the reports above referred to, together with that unscrupulousness of management referred to in detail in the quotation from the Sixty-sixth Annual Report above, was operating to produce an inevitable result. The following statement in the Seventy-third Annual Report of the Insurance Commissioner of the State of California at pages XXII XXIII summarizes the final action that was necessary:

> "In conformity with the previously announced policy of the Division of Insurance directed toward the rigid enforcement of all insurance laws and regulations, the Division in 1940 set important precedent in the hearings and court proceedings involving so-called Chapter 9 life and disability insurers.
>
> Chapter 9 life and disability insurers are so called because they are organized under and operate pursuant to the provisions of Chapter 9, Part 2, Division 2 of the Insurance Code which provides for mutual life insurers issuing policies on the stipulated premium plan with provision for assessment.
>
> Prior to the investigations and hearings which ultimately resulted in the conservatorship proceed-

ings, the Division received hundreds of complaints from every section of the country concerning alleged illegal practices of these companies. The records disclose the receipt of more than five hundred such communications within a year, specifying as grounds of complaint, fraudulent claim settlement, misrepresentations by agents, exorbitant salaries paid to officers and executives, and many other related wrongs. Having determined the extent of his authority in these matters through a ruling by the Attorney General, the Commissioner commenced proceedings against each of the twenty Chapter 9 companies and required each, upon a date specified to present evidence of their compliance with the laws of the State of California.

A thorough investigation of each company was made, the inquiry being directed to the activities of the executive officers, the treatment and settlement of claims of policyholders, the types of contracts being offered to the public, and the methods employed in selling such contracts, the salaries paid executives and employees, the types of overwriting and general commissions being paid for the acquisition of business, the expense or cost to the member of such a mutual corporation for the operation of the business, and the type, character, quality and value of the business being accepted. Disinterested expert witnesses in the fields of actuarial science and executive management of insurance companies were called upon to analyze the operation of these companies and testify in connection with the results of their analyses. Without exception the insurers were represented by competent counsel and were given a full opportunity not only to present evidence, but to cross examine and interrogate all persons called to testify. The combined records of these hearings comprise, exclusive of over one thousand exhibits, more than twelve thousand pages of testimony.

Almost without exception, the evidence showed that various parties, through proxy control or outright purchase, were operating these companies as proprietary interests for their own private gain, contrary to the express provisions of the Code and the fundamental concept of such mutual institutions. This as well as other practices found to be prevalent created a hazardous condition likely to result in financial instability or insolvency.

As a result of these hearings petitions seeking the appointment of the Insurance Commissioner as conservator were filed in the Superior Court and all petitions were granted without exception. In all, twelve insurers were taken over in 1940 and are set forth in Schedule 5 of Part 1 of this Report.

The plan to be submitted to the courts for the ultimate disposition of these companies has not yet been formulated. When it is considered that the economic status of the majority of these policyholders is such as to make the payment of premium a major item in their family budgets, it becomes important to devise a plan of rehabilitation through which the best interests of these policyholders will be protected.

Whatever the outcome, these hearings and seizures have had the important effect of serving notice on unscrupulous promoters that the insurance field is one in which their operations will not be tolerated. Insurance is more than a business, it has become so clothed with a public interest that it is now one of the most important of contemporary social institutions. In it millions have reposed their faith and upon its continued protection against the ravages of unsound and dishonest management rests the future security of these millions. This Division is enjoined with the duty of enforcing the laws designed to afford

this protection. It intends to continue the discharge of this duty with all the vigor and implements at its command."

Of these seizures, litigation in respect to several of these insurers reached a court of record. The facts set forth in the opinions in these cases furnish ample illustration of the dangers to the public welfare poised by these under-financed corporations. *Caminetti v. State Mutual Life Insurance Co.* (1942) 52 Cal. App. (2d) 321, 126 Pac. (2d) 165; *Caminetti v. Guaranty Union Life Ins. Co.* (1942) 52 Cal. App. (2d) 330, 126 Pac. (2d) 159; *Caminetti v. National Guaranty Life Ins. Co.* (1942) 52 Cal. App. (2d) 835, 126 Pac. (2d) 170.

Summarizing the history, then, we find that the legislation and reports reflect a definite and developing plan of legislative and administrative action on behalf of the public welfare by the appropriate governmental authorities of the State of California:

1. In 1934, the Insurance Commissioner seized a number of organizations operating in violation of the law. In reporting the seizure he noted others, technically complying with the law, but whose operations, owing to looseness and confusion of the then existing legislation, were inimical to the public welfare (Sixty-sixth Annual Report of the Insurance Commr., pp. 10-11).

2. In 1935, statutes were adopted tightening the loose administrative reins, forbidding organization or admission of any more completely "unreserved" and unfinanced organizations (mutual benefit life associa-

tions), permitting existing ones to accumulate or borrow some capital in order to qualify as partially financed organizations with *some* life reserve requirements (Stats. 1935, ch. 283, pp. 1002, 657). At the same time, similar legislation imposed definite reserve requirements on the partially financed organizations ("Life, etc., on the assessment plan" companies) and provided means for increases of their finances (Stats. 1935, pp. 667, 678). Both pieces of legislation were commented on and explained in the Commissioner's report of that year (Sixty-eighth Annual Report of the Insurance Commissioner, p. XX).

3. In 1937, additional legislation regulating the operation of mutual benefit associations to further honesty of operation was enacted (Stats. 1937, ch. 726, p. 2024).

4. In 1939, obviously in order to afford a means of quickly relieving a lack of capital in these partially-financed organizations, a means of selling stock with capitalization requirements less stringent than in the ordinary case was granted by the legislature to these organizations then operating, while at the same time organization or admission to the state of new or additional deficiently financed companies was forbidden (Stats. 1939, ch. 321, p. 1609).

5. In 1940, despite all the legislation above referred to, the Insurance Commissioner was compelled to take over more than half of the organizations referred to because of abuses noted by a predecessor in office in 1934 (Seventy-third Annual Report of the Insurance

Commissioner, p. XXII, cf. Sixty-sixth Annual Report of the Insurance Commissioner, pp. 10-11).

It is respectfully submitted that the above record of experience with organizations of the nature of the Society for which appellant acted is ample justification for California's refusal, embodied in section 10818, Ins. Code, to permit such organizations to operate commercially among her people, *whether organized within her borders* or organized in states not having equally high financial standards, so long as there be no Federal statute which under the commerce clause compels such permission. It should be noted that California at the same time permits organizations having qualities which assure their non-commercial character so to operate, under conditions safeguarding that character (Ins. Code, sec. 10490, et seq.).

The principles of law which sustain the validity of these statutes—and which equally reaffirm the validity of the licensing provisions first above discussed— are firmly established.

Under our American system of dual government, federal and state, a conflict of powers often requires reconciliation. It is fundamental that the federal Government has only those powers enumerated in the Constitution and those powers implied therefrom. Powers not granted to the federal Government, or prohibited by the Constitution to the states, are reserved to the states (Tenth Amendment, U. S. Constitution; *McCulloch v. Maryland* (1819) 4 Wheat. 316). Police power, the power to promote general prosperity as well as public safety, health and morals, remains reserved to the states. This power—the least

limitable of the exercises of government (*Hadacheck v. Sebastian* (1915) 239 U.S. 394)—has especial scope in the regulation of insurance. That business has uniformly been held to be a business affected with a public interest. Thus, in speaking of a state statute regulating insurance rates, the Supreme Court stated in *German Alliance Ins. Co. v. Lewis* (1914) 233 U.S. 389, 412:

> "Those regulations exhibit it to be the conception of the law making bodies of the country without exception that the business of insurance so far affects the public welfare as to invoke and require governmental regulation. A conception so general cannot be without cause. * * * The effect of insurance—indeed, it has been said to be its fundamental object—is to distribute the loss over as wide an area as possible. In other words, the loss is spread over the country; the disaster to the individual is shared by many, the disaster to a community shared by other communities; * * *
>
> Their (i.e. insurance companies) efficiency, therefore, and solvency are of great concern. * * *"

To the same effect are numerous decisions of this Court, e.g.:

National Ins. Co. v. Wanberg (1922) 260 U.S. 71;
Osborn v. Ozlin (1940) 310 U.S. 53;
La Tourette v. McMaster (1919) 248 U.S. 465.

La Tourette v. McMaster, last cited, is particularly in point in the case at bar, in that it recognized that since insurance is clothed with a public interest and subject to the regulatory power of the states, insurance agents, brokers and solicitors engaged in that business are subject to state regulation. The Court said (248 U.S. 467):

"* * * And it necessarily follows that, as insurance is affected with a public interest, those engaged in it or who bring about its consummation are affected with the same interest and subject to regulation as it is. A broker is so engaged—is an instrument of such consummation. The statute makes him the representative of the insured (Hooper v. California, 155 U.S. 648, 657), and his fidelity to both may be the concern of the state to secure."

Under the foregoing principles the statutes of California here involved are of unquestionable validity; similar laws have been uniformly sustained by this Court for nearly a century. The only occasion for this suit and for appellant's belated attack on these statutes is the decision of this Court in *U. S. v. Southeastern Underwriters Assn.* (1944) 322 U. S. 533. Nothing in that case lends any support to appellant's contentions. It long has been held that in cases where Congress has *not* exercised contradictory power under the Commerce Clause the police power of the states extends to and may be exercised for the public weal in the regulation of interstate commerce with respect to matters of local concern.

See the following decisions of this Court and the numerous cases cited therein:

S. C. Hwy. Dept. v. Barnwell Bros. (1938) 303 U. S. 177;

Parker v. Brown (1943) 317 U. S. 341;

Union Brokerage Co. v. Jensen (1944) 322 U. S. 202;

Southern Pac. Co. v. State of Ariz. ..... U. S. .....
65 S. Ct. 1515, decided June 18, 1945, No. 56, Oct. 1944.

In *Parker v. Brown*, supra, this Court said (317 U. S. 359-362):

"The governments of the states are sovereign within their territory save only as they are subject to the prohibitions of the Constitution or as their action in some measure conflicts with powers delegated to the National Government, or with Congressional legislation enacted in the exercise of those powers. This Court has repeatedly held that the grant of power to Congress by the Commerce Clause did not wholly withdraw from the states the authority to regulate the commerce with respect to matters of local concern, on which Congress has not spoken. • • •

• • • When Congress has not exerted its power under the Commerce Clause, and state regulation of matters of local concern is so related to interstate commerce that it also operates as a regulation of that commerce, the reconciliation of the power thus granted with that reserved to the state is to be attained by the accommodation of the competing demands of the state and national interests involved. • • •

Such regulations by the state are to be sustained, not because they are 'indirect' rather than 'direct', see DiSanto v. Pennsylvania, supra; cf. Wickard v. Filburn, supra, not because they control interstate activities in such a manner as only to affect the commerce rather than to command its operations. But they are to be upheld because upon a consideration of all the relevant facts and circumstances it appears that the matter is one which may appropriately be regulated in the interest of the safety, health and well-being of local communities, and which, because of its local character and the practical difficulties involved, may never be adequately dealt with by Congress. Because of its local character also there may

be wide scope for local regulation without substantially impairing the national interest in the regulation of commerce by a single authority and without materially obstructing the free flow of commerce, which were the principal objects sought to be secured by the Commerce Clause."

The *Southeastern Underwriters Association* case, far from lending support to appellant's contentions, specifically applies the above principles to the business of insurance.

The Court was cognizant of the fact that attempts might be made to distort its finding into a holding that state regulation of foreign insurance companies doing business within its borders violated the Commerce Clause of the Constitution, and to forestall such an interpretation it reaffirmed the above principles and declared them applicable to the insurance business (322 U. S., 547-549):

"Another reason advanced to support the result of the cases which follows Paul v. Virginia has been that, if any aspects of the business of insurance be treated as interstate commerce, 'then all control over it is taken from the states and the legislative regulations which this court has heretofore sustained must be declared invalid'. Accepted without qualification, that broad statement is inconsistent with many decisions of this Court. It is settled that, for Constitutional purposes, certain activities of a business may be intrastate and therefore subject to state control, while other activities of the same business may be interstate and therefore subject to federal regulation. And there is a wide range of business and other activities which, though subject to federal regulation, are so intimately related to local welfare that, in the absence of Congressional action, they may be regu-

lated or taxed by the States. In marking out these activities the primary test applied by the Court is not the mechanical one of whether the particular activity affected by the state regulation is part of interstate commerce, but rather whether, in each case, the competing demands of the state and national interests involved can be accommodated. And the fact that particular phases of an interstate business or activity have long been regulated or taxed by states has been recognized as a strong reason why, in the continued absence of conflicting Congressional action, the state regulatory and tax laws should be declared valid."

We submit that the facts concerning the California regulatory statutes above set forth, and the principles and express adjudications in the cases above cited, demonstrate the need for, and sustain the validity of, section 10818 and the related provisions of the California Insurance Code. Likewise, they further demonstrate the validity of the licensing provisions discussed in both of the preceding sections of our brief.

VII.

CONGRESS HAS SHOWN THAT ITS INTENTION ALWAYS HAS BEEN AND CONTINUES TO BE, UNTIL CONGRESS SHALL OTHERWISE SPECIFICALLY ENACT, THAT THE STATES MAY REGULATE AND TAX THE BUSINESS OF INSURANCE.

The division of regulation of interstate commerce into two classes, first mentioned in *Cooley v. Board of Wardens of the Port of Philadelphia* (1851) 12 How. 299, that is, into matters requiring a national uniform regulation, if any, and matters subject to local control, resulted in the development of the theory known as Congressional "silence." By this doctrine is meant that as to matters national in character, if regulated at all, they should be regulated uniformly throughout the country, and that the silence of Congress on the subject must mean that Congress intended no regulation. Under such circumstances the states could not by regulation affect such matters. Thus in *Robbins v. Shelby County Taxing District* (1887) 120 U.S. 489, the Court stated (p. 493):

> "that where the power of Congress to regulate is exclusive (i.e., on subjects national in character) the failure of Congress to make express regulations indicates its will that the subject shall be left free from any restrictions or impositions; and any regulation of the subject by the states, except in matters of local concern only, as hereafter mentioned, is repugnant to such freedom."

And see,

West v. Kansas Natural Gas Co. (1911) 221 U.S. 229;

Missouri v. Kansas Natural Gas Co. (1924) 265 U.S. 298.

However, the principle of Congressional "silence" applies only where the nature of the regulation should be uniform nationally. The principle does not affect the legality of state regulation of local matters. Thus Justice Hughes in the Minnesota Rate Cases (*Simpson v. Shepard* (1913) 230 U.S. 352, 402) concluded:

> "But within these limitations there necessarily remains to the states until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. It extends to those matters of a local nature as to which it is impossible to derive from the constitutional grant an intention that they should go uncontrolled pending Federal intervention. * * * Our system of government is a practical adjustment by which the national authority as conferred by the Constitution is maintained in its full scope without unnecessary loss of local efficiency. Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the state appropriately deals in making reasonable provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the Federal power. In such case, Congress must be the judge of the necessity of Federal action. Its paramount authority always enables it to intervene at its discretion for the complete and effective government of that which has been committed to its care, and, for this purpose and to this extent, in response to a conviction of national need, to displace local laws by substituting laws of its own. The successful working of our constitutional system has thus been made possible."

Further, it is clear that the principle of Congressional "silence" is not based on a specific provision of the Constitution, but rather is an inference drawn by the Courts from Congressional inaction. From this it follows that Congress may affirmatively nullify this inference by action advising that its silence is not to be construed as indicating that a particular matter shall be free from regulation.

The foregoing portions of our brief have demonstrated, we submit, that the regulatory statutes of California here involved are valid exercises of the police power within a field never subject to restriction under the so-called doctrine of congressional "silence" (compare *Minnesota Rate Cases*, quoted supra). Congress has never, either before or since the decision in the *Southeastern Underwriters* case, enacted any statute regulating the business of insurance. As said by this Court in the *Southeastern Underwriters Association* case, in referring to the long history of state regulation and taxation of insurance businesses (322 U. S., 548-549):

> "And the fact that particular phases of an interstate business or activity have long been regulated or taxed by states has been recognized as a strong reason why, in the continued absence of conflicting Congressional action, the state regulatory and tax laws should be declared valid."

If doubt existed, however, it clearly would be dispelled by Public Law 15, enacted March 9, 1945 (59 Stat. 33), in which Congress expressly provided that "the *continued* regulation and taxation by the several States of the business of insurance is in the public interest and that silence

on the part of Congress *shall not be construed* to impose any barrier" to such regulation or taxation, and by which Congress further expressly enacted that the insurance business and persons engaged therein shall, until Congress otherwise provides, be subject to the regulatory and tax laws of the several States.[12]

---

12 "An Act

To express the intent of the Congress with reference to the regulation of the business of insurance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

Sec. 2 (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance; Provided, That after January 1, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

Sec. 3. (a) Until January 1, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, and the Act of June 19, 1936, known as the Robinson-Patman Anti-discrimination Act, shall not apply to the business of insurance or to acts in the conduct thereof.

(b) Nothing contained in this Act shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

Sec. 4. Nothing contained in this Act shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the Na-

The power of Congress to make its intent known and effective by such an act is now beyond question.

International Shoe Co. v. Washington, decided December 3, 1945, No. 107, O. T. 1945.

In the case just cited this Court said (page 4 of slip opinion):

"Appellant's argument, renewed here, that the statute imposes an unconstitutional burden on interstate commerce need not detain us, for 53 Stat. 1391, 26 U. S. C. §1606(a) provides that 'No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce.' It is no longer debatable that Congress, in the exercise of the commerce power, may authorize the states, in specified ways, to regulate interstate commerce or impose burdens upon it. *Kentucky Whip & Collar Co. v. Illinois Central R. Co.*, 299 U. S. 334; *Perkins v. Pennsylvania*, 314 U. S. 586; *Standard Dredging Co. v. Murphy*, 319 U. S. 306, 308; *Hooven & Allison v. Evatt*, 324 U. S. 652, 679; *Southern Pacific Co. v. Arizona*, No. 56, 1944 Term, decided June 18, 1945, slip opinion p. 6."

---

tional Labor Relations Act, or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938, or the Act of June 5, 1920, known as the Merchant Marine Act, 1920.

Sec. 5. As used in this Act, the term 'State' includes the several States, Alaska, Hawaii, Puerto Rico, and the District of Columbia.

Sec. 6. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected."

To the same effect is *Southern Pac. Co. v. Ariz.* (June 18, 1945) ___ U.S. ___, 65 S.Ct. 1515, in which this Court pointed out that *Congress*, if it acts, is the final arbiter as to whether the subject of legislation affecting interstate commerce is of such a national character that it is exclusively for federal control, or, on the other hand, whether the states may also legislate regarding it. In enacting Public Law 15, Congress exercised its power of defining "the distribution of power over interstate commerce" (*Southern Pac.* case, supra, 65 S.Ct., 1520), and, accordingly, this clearly expressed desire of Congress that the states continue to regulate insurance is conclusive.

The Act is an expression of the Congressional intent as that intent, with its resulting distribution of power, has existed from the beginning. It is a clear expression by Congress of its recognition of the need for state regulation of foreign insurance companies doing business within their borders and of an intention that the regulatory statutes of the states always have been and shall continue valid. As pointed out by this Court in the *Southeastern Underwriters Association* case, quoted above, the fact that the states long have regulated insurance creates a strong inference that existing state laws should not be invalidated. Public Law 15 removed any possible doubt as to what the congressional intention had been. Appellant's contention that the *Southeastern Underwriters Association* case strikes down the provisions of the California statutes regulating insurance, as applied to this case, would mean that individuals are now free to engage in the insurance business in California without complying with the most fundamental regulatory laws requiring common honesty and efficiency in the conduct of insurance business,

notwithstanding the fact that Congress has not at any time enacted any legislation which regulates insurance, and notwithstanding the fact that Congress expressly has indicated that its intention from the beginning has been and is that such regulatory laws are and shall continue to be valid until such time as Congress expressly shall occupy the field.

CONCLUSION.

The law has always been that the states have power to enact statutes of the type of which appellant was convicted and that they are effective as to agents of foreign insurance companies. The decision of this Court holding the business of insurance to be commerce, and when conducted over state lines to constitute interstate commerce subject to the federal anti-trust laws, does not change this precept.

There is a compelling practical reason founded on public policy and endorsed by the Congress of the United States why the California regulatory laws involved in this case should be upheld. Unless this appeal is affirmed, the result would be that any person, firm or group could engage in the insurance business and comply only with the laws of the state having the weakest regulatory laws by the simple expedient of operating from that state, but sending agents to the other states of the Union. Indeed it is conceivable that such operations could be conducted from foreign countries, perhaps having no effective regulatory laws which guarantee that insurance contract obligations will be paid to assureds when payments are due.

From the standpoint of agents and salesmen operating in California, a reversal of this case would mean that any person, unscrupulous or otherwise, could sell insurance in that state for a foreign insurance company with immunity, for there is no federal statute to control the situation. Such situation would result in depriving the public of the protection of the carefully thought out and long enforced laws enacted for its protection.

This Court has never held that state regulatory insurance laws of the type in question are unconstitutional. On the contrary it consistently has sustained them throughout the entire course of our national life. We do not believe that it intended to annul such laws by the decision in *U. S. v. Southeastern Underwriters Assn.*

Dated, San Francisco, California,
December 26, 1945.

Respectfully submitted,

M. ARTHUR WAITE,
District Attorney of Ventura County, State of California,
JULIEN G. HATHAWAY,
Deputy District Attorney of Ventura County, State of California,
ROBERT W. KENNY,
Attorney General of the State of California,
T. A. WESTPHAL, JR.,
Deputy Attorney General of the State of California,
HAROLD B. HAAS,
Deputy Attorney General of the State of California,
Attorneys for Appellee.

H. F. ORR,
Of Counsel.

(Appendix Follows.)

CALIFORNIA INSURANCE CODE.

Division 1, Part 2, Chapter 1.

§703. Except when performed by a surplus line broker, the following acts are misdemeanors when done in this State:

(a) Acting as agent for a nonadmitted insurer in the transaction of insurance business in this State.

(b) In any manner advertising a nonadmitted insurer in this State.

(c) In any other manner aiding a nonadmitted insurer to transact insurance business in this State.

In addition to any penalty provided for commission of the misdemeanors, a person violating any provision of this section shall forfeit to this State the sum of five hundred dollars ($500), together with one hundred dollars ($100) for each month or fraction thereof during which he continues such violation.

Division 1, Part 2, Chapter 5.

§1639. The purpose of this chapter is to protect the public by requiring and maintaining professional standards of conduct on the part of all insurance agents and insurance brokers acting as such within this State.

§1642. A person shall not act as an insurance agent, broker, or solicitor until a license is obtained from the commissioner, authorizing such person so to act.

§*1643*. Such license shall be obtained only on a written application in a form prescribed by the commissioner, stating the kinds of insurance which the applicant desires to transact. The commissioner may decline to act upon an incomplete or defective application until amendments or an amended application are filed with him which complete the prescribed form and are properly executed. He may prescribe the form of such amendments or amended application.

§*1648.5*. The commissioner shall not grant a license to act as an agent or broker:

(a) To any individual who is neither a citizen or national of the United States nor an applicant for such citizenship who has lawfully and properly filed a proper declaration or application therefor in a court constituted by a law of the United States, unless such person is licensed under this chapter when this section takes effect.

(b) To any minor.

(c) To any copartnership, association or corporation if any person named in the application to exercise agency or brokership powers cannot be licensed under subdivision (a) or (b) of this section.

§*1649*. The commissioner shall investigate the qualifications of the applicants. Except as otherwise prescribed in this article he may issue the license applied for to an applicant on a showing satisfactory to him that the following facts exist:

(a) The applicant is properly qualified to perform the duties of an insurance agent, broker, or solicitor.

(b) Granting the license will not be against public interest.

(c) The applicant intends actively and in good faith to carry on the business of insurance agent, broker, or solicitor.

(d) In the case of a corporate applicant, the articles of incorporation permit it to act as an insurance agent or broker.

(e) In the case of an association or copartnership applying for such a license, its articles of association or agreement of partnership do not forbid it from so acting.

(f) The license is not being secured for the purpose of writing of insurance as to which the right to take commission is limited by section 760, at a cost less than specified in such contracts.

(g) In the case of a person who has not held a license to act as an insurance agent, broker, or solicitor, covering the license period preceding the period covered by the license applied for, the applicant has within six months preceding the date of issue of the license, taken and passed the qualifying examination provided in this article.

(h) The applicant is of good business reputation.

§1674. The commissioner shall conduct or arrange for a written examination, to be given at least twice a year upon questions, prepared by the commissioner, as to the qualifications of applicants or members or officers of applicants to act as insurance agent, broker or solicitor.

§1675. The examinations shall be of sufficient scope to satisfy the commissioner that the applicants have sufficient knowledge of, and are reasonably familiar with, the insurance laws of the State and with the provisions, terms and conditions of the insurance which the license will authorize

them to transact and have a general and fair understanding of the obligations and duties of an insurance agent, broker, or solicitor.

§*1678*. The commissioner shall require in advance the following fees:

• • •

(b) For filing the application for each annual license of an individual agent, or solicitor, four dollars.

(c) For giving to any person the qualifying examination for a license under this article, five dollars.

• • •

(g) For filing the first amendment to an application or for filing the first amended application, one dollar.

§*1679*. (a) Unless sooner suspended, revoked or terminated, the license of every insurance agent, broker, or solicitor expires July 1st of each year unless application for renewal is filed as provided in subdivision (b).

(b) Application for renewal of such license may be filed on or before June 3d, upon payment of the renewal fee.

(c) Such license may be renewed upon application filed between June 3d and July 31st upon payment of the renewal fee plus an additional fee equal to the renewal fee.

(d) The commissioner shall mail notice for forfeiture of renewal rights not later than July 20th, to:

(1) The licensee.

(2) The employing agent or broker, if any.

(3) The appointing insurers, if any.

Failure to mail such notice shall not continue the right of renewal.

(e) Such license shall not be renewed after July 31st but the person may make application for a new license as provided in this code, and shall take and pass the qualifying examination.

Division 1, Part 2, Chapter 6.

§1760. Any citizen of this State may negotiate and effect insurance on his own property with any nonadmitted insurer.

§1761. Except as provided in Sections 1760 and 1760.5, a person within this State shall not transact any insurance on property located or operations conducted within, or on the lives or persons of residents of this State with nonadmitted insurers, except by and through a surplus line broker licensed under this chapter and upon the terms and conditions prescribed in this chapter.

§1763. A surplus line broker may solicit and place insurance, other than as excepted in section 1761, with nonadmitted insurers only if such insurance can not be procured from a majority of the insurers admitted for the particular class or classes of insurance. Such part of the insurance as cannot be so procured may be procured for nonadmitted insurers, if the insurance is not placed in a nonadmitted insurer for the purpose of procuring a rate lower than the lowest rate which will be accepted by any admitted insurer. It shall be conclusively presumed that insurance is placed in violation of this paragraph where

the insurance is actually placed with a nonadmitted insurer at a lower rate of premium or lower premium than the lowest rate of premium or the lowest premium which could be obtained from an admitted insurer unless, at the time such insurance attaches, there is filed with the commissioner a statement describing the insurance, specifying the rate and the nearest procurable rates from admitted insurers. Unless the commissioner within five days after such filing notifies the filing broker that in his opinion the placing of the insurance constitutes a violation of this section, the broker may thereafter maintain in effect such insurance. If within such five day period the commissioner notifies the surplus line broker that such insurance is in violation of this section and orders the broker to effect termination of such insurance within ten days from such notice, and the broker fails or refuses to effect such termination, such failure or refusal is a violation of this section. Statements filed under this section shall not be subject to public inspection unless the commissioner determines that the public interest or the welfare of the filing broker requires that any statement be made so subject. The commissioner may make and publish reasonable rules and regulations, consistent with this chapter, in respect to transactions governed thereby and the basis or bases for his determinations hereunder.

§*1765*. Upon application in such form as the commissioner prescribes, the commissioner shall issue a license authorizing any applicant that is trustworthy and competent to transact an insurance brokerage business in such manner as to safeguard the interest of the insured, to act as a surplus line broker from the date of such license until the first day of July succeeding, on the delivery to

the commissioner of a bond to the State of California in the sum of five thousand dollars with an admitted surety insurer conditioned that said licensee will fully and faithfully comply with the requirements of this chapter.

The commissioner shall charge and collect in advance a fee of fifty dollars for filing each application for a license to act as a surplus line broker.

§1775.5. Every surplus line broker shall annually, on or before the first day of July of each year pay to the Insurance Commissioner for the use of the State of California a tax of three per cent of the gross premiums upon business done by him under authority of his license during the preceding calendar year, less three per cent of return premiums paid by him by reason of cancellation or reduction of premium, excluding gross premiums paid and return premiums paid by him upon business governed by the provisions of section 1760.5.

Division 2, Part 2, Chapter 9.

§10810. Every contract whereby a benefit is to accrue to a person named therein through the death of the insured, or his physical disability from accident or sickness, or for the payment of any sum of money as an annuity or endowment, if the benefit is conditioned, not upon fixed payments but upon the collection from time to time of stipulated premiums with provision requiring additional payments from insured members by assessment, shall be a contract of mutual insurance on the stipulated premium plan; and the business involving the issuance of such con-

tracts shall be carried on in this State only by duly organized corporations subject to this chapter.

§*10818.* On and after January 1, 1940, no new insurer may be organized or admitted to operate under this chapter. Nothing herein contained shall prohibit an insurer theretofore existing under or by virtue of this chapter from transforming to an insurer operating under the provisions of Chapter 9 a of this part nor shall anything herein contained prohibit an association now operating under Chapter 8 of this part from transforming to an insurer operating under this chapter at times and in the manner provided in Chapter 8. Any corporation formed pursuant to section 10815, which, prior to January 1, 1940, exhibits proof satisfactory to the commissioner that it has procured one hundred subscribers or applicants who have each paid the required initial premium, and which also deposits with the commissioner on or before January 1, 1940, the sum of $1,000 as a payment on its statutory deposit, may be admitted on completion of its organization and statutory deposit on or before July 1, 1940.

FILE COPY

Office - Supreme Court, U. S.
FILED
JAN 5 1946
CHARLES ELMORE CROPLEY

Supreme Court of the United States

October Term, 1945, No. 274.

F. O. ROBERTSON,

Appellant,

against

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

BRIEF OF THE STATE OF NEW YORK
as *Amicus Curiae*

January 4, 1946.

NATHANIEL L. GOLDSTEIN,
Attorney General of the State of New York.

ORRIN G. JUDD,
Solicitor General.

SAUL A. SHAMES,
Assistant Attorney General, of Counsel.

INDEX

	PAGE
Statement	1
Facts	3
Opinion of the Superior Court	6
Argument	7
POINT I—The business of insurance is clothed with a public interest, and is subject to the regulatory police power of the states. As long as Congress does not legislate in that field, State laws, designed for the protection of their residents, may not be invalidated on the ground that interstate commerce is affected	8
A. The business of insurance is affected with a public interest	8
B. Until Congress occupies the field, state regulatory provisions, enacted in the exercise of the police power, are valid even though interstate commerce is affected	9
POINT II—Nothing in *United States* v. *South-Eastern Underwriters Association*, 322 U. S. 533 (1944), justifies the conclusion that activities of persons within a state, acting on behalf of insurance companies doing an interstate business, may not be subjected to regulation under the state police power; on the contrary, the opinion expressly vouchsafes such right. In any event, Congress, by the enactment in 1945 of Public Law 15, has sanctioned state regulation and completely dispelled any possible basis for appellant's assertions	20
A. The decision in *United States* v. *South-Eastern Underwriters Association*, 322 U. S. 533 (1944)	20
B. Public Law 15 of 1945	24
Conclusion	27
Appendix	28

Table of Cases Cited

PAGE

Asbury Hospital v. Cass County, 66 Sup. Ct. 61 15

Bothwell v. Buckbee, Mears Co., 275 U. S. 274 .... 9, 21

California v. Thompson, 313 U. S. 109 .....10, 11, 12, 13

Carter v. Virginia, 321 U. S. 131 .....10, 12, 13

Cooley v. Board of Wardens, 12 How. 299 26

Duckworth v. Arkansas, 314 U. S. 390 10

First National Benefit Society v. Garrison, 58 F. Supp. 972 2

German Alliance Ins. Co. v. Lewis, 233 U. S. 389 ... 8, 9

Glass v. Massachusetts, 246 Ala. 588, 22 So. (2d) 21 2

Glass v. Prudential, 246 Ala. 579, 22 So. (2d) 13 ... 2

Hartford Accident & Indemnity Co. v. Nelson, 291 U. S. 352 8

Hooper v. California, 155 U. S. 648 ..... 9, 21

Hoopeston Canning Co. v. Cullen, 318 U. S. 313 ..14, 18-19

In re Insurance Tax Cases, 160 Kan. 300, 161 P. (2d) 726 2

Insurance Commissioner of Pennsylvania v. Griffiths, 23 N. J. Misc. 96, 41 A. (2d) 386 2

International Shoe Co. v. Washington, 66 Sup. Ct. 154 .....18, 25

Iowa State Traveling Men's Assn. v. Ruge, 242 Fed. 762 18

Keehn v. Hi-Grade Coal & Fuel Co., 23 N. J. Misc. 102, 41 A. (2d) 525 2

Keehn v. Laubach, 22 N. J. Misc. 380, 39 A. (2d) 73 2

La Tourette v. McMaster, 248 U. S. 465 .....9, 13-14

Massachusetts Mutual v. Forbes, Circuit Court, Ingham County, Michigan, No. 25242 2

Mendola v. Dineen, 185 Misc. 540, 57 N. Y. S. (2d) 219 ..... 2, 3

PAGE

Metropolitan Casualty Ins. Co. v. Brownell, 294 U. S. 580 16

Milk Control Board v. Eisenberg Farm Products, 306 U. S. 346 10

Minnesota Rate Cases, 230 U. S. 352 10

National Surety Marine Ins. Corp. v. Harrington, pending in U. S. Dist. Ct., Boston, Mass. 2

National Union Fire Ins. Co. v. Wanberg, 260 U. S. 71 ..... 8, 9, 21

New York Life Ins. Co. v. Deer Lodge County, 231 U. S. 495 ..... 9, 21, 23

O'Gorman & Young v. Hartford Ins. Co., 282 U. S. 251 8

Orient Ins. Co. v. Daggs, 172 U. S. 557 16

Osborn v. Ozlin, 310 U. S. 53 ..... 8, 9, 18

Parker v. Brown, 317 U. S. 341 ..... 10, 11

Paul v. Virginia, 8 Wall. 168 ..... 9, 21, 23

Pennsylvania Lumbermen's Mutual Fire Ins. Co. v. Meyer, 197 U. S. 407 17

Polish National Alliance v. National Labor Relations Board, 322 U. S. 643 23

Prudential v. Forbes, Circuit Court, Ingham County, Mich., No. 25224 2

South Carolina Highway Dep't v. Barnwell Bros., 303 U. S. 177 ..... 10, 17

Southern Pacific Co. v. Arizona, 65 Sup. Ct. 1515 ..... 10, 25

State Farm Mutual Automobile Ins. Co. v. Duel, pending in Circuit Court, Dane County, Wisconsin 2

State Farm Mutual Auto Ins. Co. v. Duel, 324 U. S. 154 ..... 14, 15, 18

Union Brokerage Co. v. Jensen, 322 U. S. 202 ..... 10, 12, 13, 14

United States v. South-Eastern Underwriter Association, 322 U. S. 533, ... 2, 6, 7, 8, 12, 19, 20-22, 23, 24, 26, 27

Ware v. Travelers Ins. Co. 150 F. (2d) 463 2

PAGE

Statutes

California Insurance Code:
§ 36 5
§ 700 5
§ 703(a) 3
§ 1642 3
§ 1760 16
§ 1761 4
§ 1763 ..... 4, 16
§ 10510 5
§ 10810 ..... 5, 17
§ 10818 ..... 5, 17
Clayton Act 25
Federal Trade Commission Act 25
Judicial Code (28 U. S. C. § 344[a]) 1
National Labor Relations Act (29 U. S. C. §152[7]) 23
New York Insurance Law (§§ 40, 42 and Art. VI) 3
Public Law 15 of 1945 (59 Stat. 33, 15 U. S. C. § 1011 *et seq.* 24-25, 26, 27, 28-9
Sherman Act (15 U. S. C., §§ 1, 2) 20, 23
United States Constitution:
Art. 1, § 8 1
Fourteenth Amendment 1

Other References

House Committee on the Judiciary Report No. 143, Feb. 13, 1945 26
WILLOUGHBY, *Constitution of the United States* 17

Supreme Court of the United States

October Term, 1945, No. 274.

F. O. ROBERTSON,

Appellant,

against

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

BRIEF OF THE STATE OF NEW YORK as *Amicus Curiae*

Statement

The appellant has appealed to this Court pursuant to the provisions of § 237 (a) of the Judicial Code (28 U. S. C. § 344 [a]), from the affirmance by the Superior Court of the State of California, County of Ventura, of a judgment of the Justice's Court of Ventura Township, entered on September 29, 1944, convicting the appellant of violating certain sections of the California Insurance Code. The judgment of conviction is challenged here on the ground that the statutes upon which it is based are repugnant to the Commerce Clause (Art. 1, § 8) of the Federal Constitution.* After the statement as to jurisdiction had been filed, this Court, on October 8, 1945, noted probable jurisdiction (R. 54).

*In appellant's assignments of error to this Court it was also claimed that the statutes were in conflict with the Fourteenth Amendment (R. 47). But no such contention is made in appellant's opening brief, the asserted invalidity of the statutory provisions being based solely on the Commerce Clause (see Appts. Opening Br. p. 36).

This brief is being filed by the State of New York as *amicus curiae*, in accordance with the provisions of Rule 27 (9) of the Rules of this Court, in support of the constitutionality of the challenged statutes.

The issues involved in this appeal, raising as they do the question of the validity of state regulatory provisions with regard to activities within a state on behalf of foreign insurance companies doing an interstate business, are of utmost importance to the State of New York.

The attack on the California laws is based on wholly unwarranted implications which appellant seeks to draw from the holding in *United States* v. *South-Eastern Underwriters Association*, 322 U. S. 533 (1944), that the business of insurance constitutes commerce. This attack on state regulatory provisions is not an isolated instance. Since the *South-Eastern* decision suits have arisen in the various states challenging the validity of either regulatory measures or premium tax laws on the basis of the *South-Eastern* holding.*

The State of New York, like California and most other states, has developed through the years a comprehensive

---

* See, e. g., *First National Benefit Society* v. *Garrison*, 58 F. Supp. 972 (S. D. Cal. 1945); *Ware* v. *Travelers Ins. Co.*, 150 F. (2d) 463 (C. C. A. 9th 1945); *National Surety Marine Ins. Corp.* v. *Harrington* (pending in United States District Court, Boston, Mass.); *Keehn* v. *Laubach*, 22 N. J. Misc. 380, 39 A. (2d) 75 (1944); *Keehn* v. *Hi-Grade Coal & Fuel Co.*, 23 N. J. Misc. 102, 41 A. (2d) 525 (1945); *Insurance Commissioner of Pennsylvania* v. *Griffiths*, 23 N. J. Misc. 96, 41 A. (2d) 886 (1945); *Mendola* v. *Pineen*, 185 Misc. 540, 57 N. Y. S. (2d) 219 (1945); *State Farm Mutual Automobile Ins. Co.* v. *Duel* (pending in Circuit Court, Dane County, Wisconsin; a prior appeal by the same company was argued in the Supreme Court of the United States, but the interstate commerce question was not decided, 324 U. S. 154 [1945]); *Glass* v. *Prudential*, 246 Ala. 579, 22 So. (2d) 13 (1945); *Glass* v. *Massachusetts Mutual*, 246 Ala. 588, 22 So. (2d) 21 (1945); *In re Insurance Tax Cases*, 160 Kan. 300, 161 P. (2d) 726 (1945); *Prudential* v. *Forbes*, and *Massachusetts Mutual* v. *Forbes* (Circuit Court, Ingham County, Michigan, Nos. 25224 and 25242).

statutory scheme for regulating the insurance business and the activities within the State of persons engaged therein. Very recently certain provisions of the New York Insurance Law (L. 1939 c. 882, §§ 40, 42 and Art. VI, as amended [McKinney's Consolidated Laws of New York, vol. 27]) were attacked in the New York Supreme Court by way of an action for declaratory judgment. The Court, in a well-reasoned opinion, sustained the constitutionality of the challenged provisions and granted the motion of the State Superintendent of Insurance for judgment dismissing the complaint. *Mendola* v. *Dineen*, 185 Misc. 540, 57 N. Y. S. (2d) 219 (1945). No appeal from that determination was taken either to the intermediate or highest appellate court in the State, and that decision is the only judicial pronouncement in the State on the constitutionality of these regulatory statutes in the light of the *South-Eastern* decision. The authoritative declaration by this Court as to the validity of such statutes as are involved in this appeal would do much to settle a troublesome problem which is confronting the Insurance Commissioners of the various states.

Facts

The appellant was convicted on two counts of a criminal complaint charging him (1) with acting as an agent "for a nonadmitted insurer in the transaction of insurance business" in the State of California, in violation of § 703 (a) of the California Insurance Code; and (2) soliciting and selling a policy of insurance without being licensed to act as an insurance agent, broker or solicitor, as required by § 1642 of the same statute (R. 1-2).* Only a person duly licensed as a surplus line broker under

*The relevant statutory provisions are fully set forth in appellee's brief. The references to the California insurance statutes are taken from Deering's California Codes, Insurance Code of the State of California.

chapter 6 of the Code may act for a nonadmitted insurer (§ 1761), and then only when the insurance "can not be procured from a majority of the insurers admitted for the particular class or classes of insurance" (§ 1763).

The testimony, in brief, showed that one A. J. O'Lein, a resident of California, had received some literature from the First National Benefit Society of Phoenix, Arizona, and in response thereto had mailed an inquiry card to the Society. Thereafter, on August 28, 1944, the appellant called at Mr. O'Lein's home and stated that he represented the First National Benefit Society (R. 7, 8). After explaining the terms and benefits of the policy to Mr. O'Lein, he requested the latter to purchase a policy of insurance in that company (R. 8, 20). As a result, the appellant, with Mr. O'Lein's consent, filled out two applications—one for Mr. O'Lein and one for Mrs. O'Lein (R. 17, 20). A check for the sum of $18.00, representing the first quarterly premium on each policy, was thereupon issued by Mr. O'Lein and made payable to the appellant (R. 17, 10). The appellant, in turn, gave Mr. O'Lein receipts for the premiums (R. 11, 17). At a later date two policies of insurance of the First National Benefit Society were received in the mail by the applicants (R. 12, 18). The cancelled check for the premiums, which Mr. O'Lein subsequently received from the bank, showed that it had been cashed by the appellant (Peo. Ex. 2; offered at R. 10, printed at R. 26). The policies of insurance issued to the applicants contained this provision (R. 31, 34):

> "Premiums necessary to maintain this Certificate in force are not fixed amounts and in event of Premium insufficiency may be adjusted, with the written approval of the Corporation Commission, for the purpose of payment of claims and general operating expenses. In the event of any emergency caused by excessive mortality the Corporation may, with the written consent, or at the direction of the Corpora-

tion Commission, levy Assessments on Members to be placed in the Mortuary Fund."

It is apparent from the foregoing that the policies issued herein come within the terms of § 10810 of the California Insurance Code, in that they are "conditioned, not upon fixed payments but upon the collection from time to time of stipulated premiums with provision requiring additional payments from insured members by assessment. * * *." Section 10818 of the Code prohibits the organization in or admission into the State of any company doing any business under an assessment plan, unless such insurer was organized or admitted in the State prior to January 1, 1940. However, any company, foreign or domestic, meeting California standards, may secure a certificate of authority to conduct an insurance business in the State (§ 700). And in so far as life insurance is concerned, both foreign and domestic insurers, be they stock or mutual companies, having a paid-in capital or surplus of at least $200,000, may transact such business in the State (§§ 10510, 36).

It is undisputed that the First National Benefit Society was not authorized to do business in California and that the applicant was not licensed to act as an agent or broker in the State (R. 22).

At the conclusion of the People's case both sides rested, no testimony having been offered on behalf of the appellant. The Trial Justice, sitting in the Justice's Court of Ventura Township, thereupon found the defendant guilty on both counts of the complaint (R. 23). On appeal to the Superior Court of the State of California, Ventura County, the judgment of conviction was affirmed (R. 40).

Opinion of the Superior Court (R. 41-43)

In a memorandum opinion Judge LOUIS C. DRAPEAU of the Superior Court, after a brief review of the undisputed facts, held that the defendant "acted as agent for a non-admitted insurer, without a license, and is clearly guilty of the crimes charged" (R. 42). Referring to the case of *United States* v. *South-Eastern Underwriters Association*, 322 U. S. 533 (1944), which appellant urged for the proposition that California had no power to regulate any phase of an interstate insurance business, the Judge said:

> "There is nothing in the case which overrules prior decisions of the Supreme Court, holding state regulation of insurance to be valid (R. 42). * * * all that this important leading case holds is that the federal law applies to interstate insurance, and that state law likewise applies to interstate insurance until the federal government may exercise its power to legislate in that particular field" (R. 43).

He accordingly affirmed the judgment of conviction.

Argument

Upon the foregoing facts, we shall argue as follows:

1. The business of insurance is clothed with a public interest, and is subject to the regulatory police power of the states. As long as Congress does not legislate in that field, state laws, designed for the protection of their residents, may not be invalidated on the ground that interstate commerce is affected.

2. Nothing in *United States* v. *South-Eastern Underwriters Association*, 322 U. S. 533 (1944), justifies the conclusion that activities of persons within a state, acting on behalf of insurance companies doing an interstate business, may not be subjected to regulation under the state police power; on the contrary, the opinion expressly vouchsafes such right. In any event, Congress, by the enactment in 1945 of Public Law 15, has sanctioned state regulation and completely dispelled any possible basis for appellant's assertions.

POINT I

The business of insurance is clothed with a public interest, and is subject to the regulatory police power of the states. As long as Congress does not legislate in that field, State laws, designed for the protection of their residents, may not be invalidated on the ground that interstate commerce is affected.

A. The business of insurance is affected with a public interest.

The business of insurance is so extensive in scope and so directly affects the security of untold numbers, that its effect on the public welfare is of far-reaching significance. "Perhaps no modern commercial enterprise directly affects so many persons in all walks of life as does the insurance business. Insurance touches the home, the family, and the occupation or the business of almost every person in the United States." *United States* v. *South-Eastern Underwriters Association*, 322 U. S. 533, 540 (1944). It is no longer open to question, therefore, but that the business of insurance is affected with a public interest and as such "is peculiarly subject to supervision and control." *Hartford Accident & Indemnity Co.* v. *Nelson*, 291 U. S. 352, 360 (1934); and see *German Alliance Insurance Co.* v. *Lewis*, 233 U. S. 389, 412, 414, 415 (1914); *Osborn* v. *Ozlin*, 310 U. S. 53, 65, 66 (1940); *National Union Fire Insurance Company* v. *Wanberg*, 260 U. S. 71, 73 (1922); *O'Gorman & Young* v. *Hartford Ins. Co.*, 282 U. S. 251, 257 (1931).

This Court, in *German Alliance Insurance Co.* v. *Lewis*, *supra*, after citing various examples of conditions imposed on insurance companies by state laws, declared (233 U. S. at p. 412):

> "Those regulations exhibit it to be the conception of the law-making bodies of the country without exception that the business of insurance so far affects the public welfare as to invoke and require governmental

regulation. A conception so general cannot be without cause. The universal sense of a people cannot be accidental; its persistence saves it from the charge of unconsidered impulse, and its estimate of insurance certainly has substantial basis."

The state's supervisory and regulatory power extends to all aspects of the business (see *Osborn* v. *Ozlin*, *supra*, 310 U. S. at p. 66), including the regulation and control of brokers and agents through whom this huge enterprise is carried on. *LaTourette* v. *McMaster*, 248 U. S. 465, 467 (1919).

B. Until Congress occupies the field, state regulatory provisions, enacted in the exercise of the police power, are valid even though interstate commerce is affected.

(1)

The Federal Government at no time has undertaken the control or regulation of the business of insurance. For years the vital problem of supervision and control has been dealt with by the various state legislatures. As a consequence each state has developed over the years a system of regulation designed to safeguard its residents and to make certain that only responsible companies and persons are permitted to engage in the insurance business. In most instances these regulations were applied with equal force both to domestic and foreign insurers. True, these state regulations, as applied to foreign insurance companies doing an interstate business, were sanctioned on the ground that the business of insurance was not commerce, in line with the doctrine first formulated in *Paul* v. *Virginia*, 8 Wall. 168 (1869).* In the face of that controlling

* See, e.g., *Hooper* v. *California*, 155 U. S. 648, 654-655 (1895); *New York Life Ins. Co.* v. *Deer Lodge County*, 231 U. S. 495, 502-504, 510 (1913); *National Union Fire Ins. Co.* v. *Wanberg*, 260 U. S. 71, 75 (1922); *Bothwell* v. *Buckbee, Mears Co.*, 275 U. S. 274, 276-277 (1927).

principle it was unnecessary to predicate these holdings on any ground other than that the business of insurance was not commerce.

But in connection with other cases involving interstate commerce, the Court, during the same period, evolved a guiding principle for testing the constitutionality of state laws which directly affect and, in some instances, even regulate interstate commerce. Succinctly stated, this governing rule is that state police measures with regard to matters of local concern, are valid and controlling even though they affect interstate commerce, until countervailed by Federal legislation operating in the same field. *Parker* v. *Brown*, 317 U. S. 341, 359-360 (1943); *California* v. *Thompson*, 313 U. S. 109, 113-114 (1941); *Union Brokerage Co.* v. *Jensen*, 322 U. S. 202, 209-210, 211 (1944); *Milk Control Board* v. *Eisenberg Farm Products*, 306 U. S. 346, 351-352 (1939); *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177, 185 (1938); *Carter* v. *Virginia*, 321 U. S. 131, 135 (1944); *Duckworth* v. *Arkansas*, 314 U. S. 390, 394-395 (1941); *Minnesota Rate Cases*, 230 U. S. 352, 402-403 (1913); cf. *Southern Pacific Co.* v. *Arizona*, 65 Sup. Ct. 1515, 1519 (1945) [not as yet officially reported].

The foregoing principle is forcefully emphasized in *Parker* v. *Brown*, *supra*, 317 U. S. 341. One of the questions there involved was whether the California Prorate Act violated the Commerce Clause. The statute imposed restrictions upon the sale of raisin crops within the State, 95% of which were marketed in interstate commerce. The purpose of the act was to restrict competition so as to maintain prices. In sustaining the validity of the statute even though it had a direct effect on interstate commerce, the Court reaffirmed the rule that (p. 360) "the Commerce Clause did not wholly withdraw from the states the authority to regulate the commerce with respect to matters of local concern, on which Congress has not spoken."

Elaborating on this principle, Chief Justice STONE continued (p. 362):

> "When Congress has not exerted its power under the Commerce Clause, and state regulation of matters of local concern is so related to interstate commerce that it also operates as a regulation of that commerce, the reconciliation of the power thus granted with that reserved to the state is to be attained by the accommodation of the competing demands of the state and national interests involved."

These regulations, it was pointed out (p. 362), are not to be sustained on the theory of being "indirect" rather than "direct," nor "because they control interstate activities in such a manner as only to affect the commerce rather than to command its operations." "But," the Court added (pp. 362-3) "they are to be upheld because upon a consideration of all the relevant facts and circumstances it appears that the matter is one which may appropriately be regulated in the interest of the safety, health and well-being of local communities, and which, because of its local character, and the practical difficulties involved, may never be adequately dealt with by Congress."

Equally expository of the rule, and of particular pertinence to the issues at bar, is the decision in *California* v. *Thompson*, *supra*, 313 U. S. 109. The question there considered was whether the statutory requirement for a license and bond to act as a transportation agent in California, violated the Commerce Clause when applied to one who negotiates for the interstate transportation of passengers over the public highways of the State. The Court in holding that it did not, stated at the outset (p. 112) that it was concerned only "with the constitutional authority of the state to regulate those who, within the state, aid or participate in a form of interstate commerce over which Congress has not undertaken to exercise its regulatory power." After referring to the residuum of state power still remaining in the states in spite of the Commerce

Clause; and after citing numerous instances where state laws involving some regulation of interstate commerce were sustained, the Court, speaking of the need of regulating the occupation of transportation broker, said (p. 115):

> "Unless some measure of local control is permissible, it must go largely unregulated. In any case, until Congress undertakes its regulation, we can find no adequate basis for saying that the Constitution, interpreted as a working instrument of government, has foreclosed regulation, such as the present, by local authority."

So, too, in the case at bar, we are solely concerned with state power to regulate the activities of a person, who, within the state aids or participates "in a form of interstate commerce over which Congress has not undertaken to exercise its regulatory power" (313 U. S. at p. 112).

Similarly, in *Carter* v. *Virginia, supra,* 321 U. S. 131, the Court sustained a state law which imposed certain requirements, including the posting of a bond, on a carrier seeking to transport liquor through the state in a purely interstate shipment; it was held that irrespective of the Twenty-first Amendment, this police measure, relating to an activity within the state, did not invade the commerce power of Congress (p. 135).

And less than one month prior to the decision in *United States* v. *South-Eastern Underwriters Association,* 322 U. S. 533 (1944), this Court in *Union Brokerage Co.* v. *Jensen, supra,* 322 U. S. 202, upheld a Minnesota statute which denied to all foreign corporations the right to maintain suit in any state court, unless they had previously obtained a certificate of authority to do business within the State. Mr. Justice FRANKFURTER, after stating that (p. 209) "the Commerce Clause does not cut the States off from all legislative relation to foreign and interstate

commerce," declared (p. 210):

> "Such commerce interpenetrates the States, and no undisputed generality about the freedom of commerce from state encroachment can delimit in advance the interacting areas of state and national power when Congress has not by legislation foreclosed state action. The incidence of the particular state enactment must determine whether it has transgressed the power left to the States to protect their special state interests although it is related to a phase of a more extensive commercial process."

He later added (p. 212):

> "Nor does it [the Commerce Clause] preclude a State from giving needful protection to its citizens in the course of their contacts with businesses conducted by outsiders when the legislation by which this is accomplished is general in its scope, is not aimed at interstate or foreign commerce, and involves merely burdens incident to effective administration."

We submit that the statutes of California here under attack are constitutionally valid within the guiding framework of the principles of the foregoing cases. Certainly if a state may require a license of one engaged as transportation agent for interstate passage of passengers (*California* v. *Thompson*, *supra*, 313 U. S. 109), and the posting of a bond by a carrier for the transport of an interstate shipment of liquor through the state (*Carter* v. *Virginia*, *supra*, 321 U. S. 131), it is not rendered impotent by the Commerce Clause from requiring that an insurance agent be licensed as a preliminary to aiding in the transaction of a contract of insurance in the State. Such requirement does no more than serve to assure that those who, within the state, engage in a business so related to the public welfare, shall be qualified both from the standpoint of character and fitness to engage in that pursuit. As this Court, quoting with approval from the state court decision, said in *LaTourette* v. *McMaster*, *supra*, 248 U. S. at p.

468: "It is important for the protection of the interests of the people of the State that the business should be in the hands of competent and trustworthy persons."

We accordingly find no validity to the argument that the statutory prohibition from acting as an agent for a nonadmitted insurer collides with the Commerce Clause as applied to one representing a company engaged in interstate commerce. In principle this prohibition is no different from the Minnesota statute, sustained in *Union Brokerage Co.* v. *Jensen*, *supra*, 322 U. S. 202, which denied to all foreign corporations the right to sue in State courts, unless they had previously been authorized to do business within the State.

The network of legislation set up by the California legislature for the protection of its inhabitants may not be evaded by the mere invocation of the Commerce Clause of the Federal Constitution. California's regulatory measures, as applied to the appellant, are of local character and application. Plainly, the appellant was attempting within the territorial boundaries of the State of California, without a license, to solicit and sell insurance of a kind which California, after years of experience, has found wanting in the requirements of safety and security. Such "regulations can not be attacked merely because they affect business activities which are carried on outside the state. Of necessity, any regulation affecting the solvency of those doing an insurance business in a state must have some effect on business practices of the same company outside the state. Nothing in the Constitution requires a state to nullify its own protective standards because an enterprise regulated has its 'headquarters elsewhere.' *Hoopeston Canning Co.* v. *Cullen*, 318 U. S. 313, 320 (1943); see also *State Farm Mutual Auto Ins. Co.* v. *Duel*, 324 U. S. 154, 158 (1945). In the last named case the appellant attacked the constitutionality of a Wisconsin statute which required, as a condition of the right of an in-

surance company to do business in the state, that its reserve be computed by stated percentages of premiums received, including the maintenance of a reserve with respect to policies written in other states. The validity of the statute was upheld, and in the course of the opinion Mr. Justice DOUGLAS said (p. 158):

> "Wisconsin has a legitimate concern with the financial soundness of companies writing insurance contracts with its citizens."

And further (p. 160):

> "As among the several states it is Wisconsin's prerogative to select the appropriate means of protecting its own citizens by establishing financial standards for companies which exploit the opportunities which Wisconsin affords."

(2)

There can be no doubt but that the corporation on whose behalf appellant was acting, could be excluded from doing business within the State. *Asbury Hospital* v. *Cass County*, 66 Sup. Ct. 61 (1945) [not as yet officially reported]. As the Court said in the *Asbury* case (p. 63):

> "The Fourteenth Amendment does not deny to the state power to exclude a foreign corporation from doing business or acquiring or holding property within it."

Obviously, if foreign corporations may be wholly excluded from doing business in the State, those who seek, within the State, to represent them in the transaction of such business may likewise be prohibited from acting on their behalf. In no other way can the power to exclude be made effective.

In this connection, moreover, it is relevant to note that even as to nonadmitted insurers, provision is made whereby a surplus line broker, operating under a special license,

is enabled to transact business in the state on behalf of such companies. True, this may only be done when the insurance sought cannot be obtained "from a majority of the insurers admitted for the particular class" and "the insurance is not placed in a nonadmitted insurer for the purpose of procuring a rate lower than the lowest rate which will be accepted by any admitted insurer" (Calif. Ins. Code § 1763). But there is nothing to prohibit an applicant and insurer from dealing directly with each other. Thus § 1760 of the California Insurance Code expressly provides that any citizen of the state may "negotiate and effect insurance on his own property with any nonadmitted insurer." The prohibition applies only to agents or brokers acting within the state on the company's behalf.

Nor is it of any consequence that surplus line brokers are subject to different fees and requirements than other agents. The added burden of control and supervision of such brokers on the responsible state officials is amply demonstrated in appellee's brief (pp. 16-18). This furnishes adequate basis for the statutory distinction. It is a firmly established principle that state legislatures have a wide range of discretion in classifying and it is sufficient to satisfy the constitutional requirement that the classification is not palpably arbitrary. *Orient Ins. Co.* v. *Daggs*, 172 U. S. 557, 562 (1899). Consequently "a statutory discrimination will not be set aside as the denial of equal protection of the laws if any state of facts reasonably may be conceived to justify it." *Metropolitan Casualty Ins. Co.* v. *Brownell*, 294 U. S. 580, 584 (1935).

(3)

Appellant is not aided by the fact that the company he represents, operating as it does on the assessment plan, could not be admitted to do business in California. The

only companies permitted to operate under that plan are those that were organized or were admitted prior to January 1, 1940, under the applicable statute (Calif. Ins. Code §§ 10810, 10818). California has found from years of experience that companies of the appellant's type, operating without adequate reserves, are unsound, lack financial stability and represent a hazardous investment to the insured (see appellee's brief, pp. 23-37). The California laws under consideration apply equally to domestic and foreign insurers and in no way discriminate against those doing an interstate business. This is a relevant factor in considering whether a state has exceeded the bounds of its power under the Commerce Clause; for "equality of treatment, as between interstate and intrastate commerce, though not conclusive of the fact that interstate commerce is not unconstitutionally interfered with, nevertheless may support a presumption that the State is exercising in good faith its police powers." 2 WILLOUGHBY, *Constitution of the United States* (2d ed. 1929) p. 1006; see also, *South Carolina Highway Dept.* v. *Barnwell Bros.*, *supra*, 303 U. S. 177, 184, n. 2.

(4)

It is argued on behalf of the appellant that his activities do not constitute doing business within the state and consequently no power to regulate such activities exists. We do not subscribe to that view. The testimony plainly showed that the appellant called at the home of a California resident (R. 7, 8); he explained the terms of the policy (R. 8, 20); he filled out the applications, collected and cashed the initial premiums, and furnished a receipt therefor (R. 10, 11, 17, 20). Activities of a lesser degree have been held to justify a holding that business was being transacted within the state. *Pennsylvania Lumbermen's Mutual Fire Ins. Co.* v. *Meyer*, 197 U. S. 407, 414.

415 (1905); *Iowa State Travelling Men's Assn.* v. *Ruge*, 242 Fed. 762, 764, 766 (C. C. A. 8th 1917), *cert. den.* 245 U. S. 657; and see *International Shoe Co.* v. *Washington*, 66 Sup. Ct. 154, 157 (1945) [not as yet officially reported].

Moreover, even had all the formalities for the issuance of the contract of insurance been carried on in the home office of the company, the issue still remains whether California's interests are so affected by the activities within the state as to give California the power it claims. See *Hoopeston Canning Co.* v. *Cullen*, *supra*, 318 U. S. at p. 316. And "the mere fact that state action may have repercussions beyond state lines is of no judicial significance so long as the action is not within that domain which the Constitution forbids." *Osborn* v. *Ozlin*, *supra*, 310 U. S. 53, 62; see also, *State Farm Mutual Ins. Co.* v. *Duel*, *supra*, 324 U. S. 154, 157-158.

In the *Hoopeston* case, *supra*, Mr. Justice BLACK, in sustaining New York's right to require a foreign insurance company to appoint a resident agent, took a sound view of the problem posed when he wrote (318 U. S. at p. 316):

> "In determining the power of a state to apply its own regulatory laws to insurance business activities, the question in earlier cases became involved by conceptualistic discussion of theories of the place of contracting or of performance. More recently it has been recognized that a state may have substantial interests in the business of insurance of its people or property regardless of these isolated factors. This interest may be measured by highly realistic considerations such as the protection of the citizen insured or the protection of the state from the incidents of loss."

He continued (p. 319):

> "We conclude that in determining whether insurance business is done within a state for the purpose

of deciding whether a state has power to regulate the business, considerations of the location of activity prior and subsequent to the making of the contract, of the degree of interest of the regulating state in the object insured, and of the location of the property insured are separately and collectively of great weight."

Tested by the foregoing considerations, California's right to legislate with respect to appellant's activities within the State can not be seriously questioned. When we consider further the need for supervision of the insurance enterprise, the fact that in the absence of state regulation the numerous phases of that business would remain completely unregulated, plus the long continued and effective systems of control by the states, we have compelling reasons for upholding state regulatory measures of persons and activities within its borders of the type here under attack, by which a state seeks to protect the welfare of its residents.

We now pass on first, to a consideration of the decision in *United States* v. *South-Eastern Underwriters Association*, 322 U. S. 533 (1945), for the purpose of demonstrating that the principles we have discussed have in no way been disturbed by that decision, and secondly to a discussion of Public Law 15, enacted by Congress in 1945, which in clearest terms authorizes the respective states to regulate the business of insurance.

POINT II

Nothing in *United States* v. *South-Eastern Underwriters Association*, 322 U. S. 533 (1944), justifies the conclusion that activities of persons within a state, acting on behalf of insurance companies doing an interstate business, may not be subjected to regulation under the state police power; on the contrary, the opinion expressly vouchsafes such right. In any event, Congress, by the enactment in 1945 of Public Law 15, has sanctioned state regulation and completely dispelled any possible basis for appellant's assertions.

A. The decision in United States v. South-Eastern Underwriters Association, 322 U. S. 533 (1944).

Appellant's principal reliance for overthrowing the California statutes involved in this appeal is the decision of this Court in *United States* v. *South-Eastern Underwriters Association*, 322 U. S. 533 (1944). That case arose out of an indictment of the South-Eastern Underwriters Association and its membership of nearly two hundred fire insurance companies for alleged violations of the Sherman Act (15 U. S. C. §§ 1, 2). The indictment charged the association with two conspiracies: (1) to restrain interstate trade and commerce by fixing premium rates in six named states; and (2) to monopolize trade and commerce in the insurance business among these states.

The defendants demurred to the indictment, claiming that the business of insurance was not commerce and consequently they were not subject to the Sherman Anti-Trust Act. The District Court sustained the demurrer, 51 F. Supp. 712. On a direct appeal to this Court under the Criminal Appeals Act, it was held (by a vote of four to three—two Justices not voting) that the business of

insurance, when it extended across state lines, constituted interstate commerce, and that the Sherman Act was applicable to combinations of insurance companies so engaged in interstate trade. It is on the basis of this holding that appellant argues that the California Insurance laws here involved are violative of the Commerce Clause and invalid.

The decision of the Court in the *South-Eastern* case, as we shall presently demonstrate, does not justify appellant's contention, and the constitutional validity of state laws with regard to matters of local concern has in no way been affected by that decision.

The ruling in the *South-Eastern* case that the business of insurance is commerce was, of course, a departure from numerous previous decisions by this Court. See, *e. g., Paul* v. *Virginia*, 8 Wall. 168, 183 (1869); *Hooper* v. *California*, 155 U. S. 648, 654-655 (1895); *New York Life Insurance Co.* v. *Deer Lodge County*, 231 U. S. 495, 502-504, 510 (1913); *National Union Fire Insurance Co.* v. *Wanberg*, 260 U. S. 71, 75 (1922); *Bothwell* v. *Buckbee, Mears Co.*, 275 U. S. 274, 276-277 (1927). Referring to these cases, Mr. Justice BLACK, writing for the majority, stated (p. 544) that in all of them the attention of the Court "was focused on the validity of state statutes . . . the extent to which the Commerce Clause automatically deprived states of the power to regulate the insurance business." He argued that, since Congress had not legislated to control the business of insurance, "invalidation of the state statutes would practically have been equivalent to granting insurance companies engaged in interstate activities a blanket license to operate without legal restraint" (*ibid.*).

Departure from the prior holdings was justified, Judge BLACK continued, on the ground that here (p. 545), the Court was not being asked "to uphold another state law,

but to strike down an Act of Congress which was intended to regulate certain aspects of the methods by which interstate insurance companies do business; * * *." Thus the Justice plainly implied that it was not the intention of the majority to cast into doubt the validity of long continued and needed state regulation in the insurance field. This implication was further strengthened when, in negating the assertion that if insurance be treated as commerce all control is taken from the states and state regulation heretofore sustained must be invalidated, Judge BLACK declared (322 U. S. at p. 548):

> "Accepted without qualification, that broad statement is inconsistent with many decisions of this Court. It is settled that, for Constitutional purposes, certain activities of a business may be intrastate and therefore subject to state control, while other activities of the same business may be interstate and therefore subject to federal regulations. And there is a wide range of business and other activities which, though subject to federal regulation, are so intimately related to local welfare that, in the absence of Congressional action, they may be regulated or taxed by the states. In marking out these activities the primary test applied by the Court is not the mechanical one of whether the particular activity affected by the state regulation is part of interstate commerce, but rather whether, in each case, the competing demands of the state and national interests involved can be accommodated."

He concluded with these pertinent words (pp. 548-549):

> "And the fact that particular phases of an interstate business or activity have long been regulated or taxed by states has been recognized as a strong reason why, in the continued absence of conflicting Congressional action, the state regulatory and tax laws should be declared valid."

Thus the precise holding in the *South-Eastern* case was merely that the Sherman Act applied to illegal com-

binations of insurance companies engaged in interstate activities; and an analysis of the majority opinion clearly supports the view that it was not the Court's intention to question the validity of state regulations of the business of insurance.

It is not without significance that on the same day the *South-Eastern* case was decided this Court also handed down its opinion in *Polish National Alliance* v. *National Labor Relations Board*, 322 U. S. 643 (1945). One of the questions before the Court was whether the activities of the petitioner, a fraternal benefit society, providing death and disability benefits to its members through twenty-seven states, tended "to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce" within the meaning of the National Labor Relations Act (29 U. S. C. § 152 [7]). Mr. Justice FRANKFURTER stated (p. 648) that the case presented a "'wholly new problem of the relation of federal authority to the business of insurance.'" Then, after noting that the long series of cases from *Paul* v. *Virginia*, 8 Wall. 168, to *New York Life Insurance Co.* v. *Deer Lodge County*, 231 U. S. 495, have invariably involved resistence under the Commerce Clause to state regulation, Judge FRANKFURTER declared (649):

> "Such was the context in which this Court decided again and again that the making of a contract of insurance is not interstate commerce and that, since the business of insurance is in effect merely a congeries of contracts, the States may, for taxing and diverse other purposes, regulate the making of such contracts and the insurance business free from the limitations imposed upon state action by the Commerce Clause. Constitutional questions that look alike often are altogether different and call for different answers because they bring into play different provisions of the Constitution or different exertions of power under it. Thus, federal regulation does not preclude state taxation and state taxation does not preclude federal regulation."

It is submitted that the conclusions drawn by the appellant from the *South-Eastern* decision are wholly unwarranted, and that under the principles set forth under Point I (*B*), *supra*, State regulations of the character here challenged are a valid and proper exercise of the State police power. The validity of these laws can come into question only when they should conflict with an Act of Congress, enacted in the exercise of its plenary power over interstate commerce, regulating the same field.

In any event whatever question may possibly have existed as to the validity of such state regulations as the result of the *South-Eastern* decision, has been put completely at rest by the enactment by Congress in 1945 of Public Law 15 (59 Stat. 33, 15 U. S. C. § 1011 *et seq.*).

B. Public Law 15 of 1945.

Subsequent to the decision in the *South-Eastern* case, the Congress of the United States enacted Public Law 15 which became effective March 9, 1945* (59 Stat. 33, 15 U. S. C. § 1011 *et seq.*). By that Act Congress affirmatively approved and authorized the continued regulation of the business of insurance by the respective states.

The purpose of the Act, to use the words of the statute, is to "express the intent of Congress with reference to the regulation of the business of insurance." In plainest terms it sanctions the "continued regulation and taxation by the several States of the business of insurance" and further provides that "silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States".

Section 2(a) further implements the broad language of the preceding paragraph. Thus it is there provided

---

* For the convenience of the Court the full text of Public Law 15 is printed as an appendix to this brief.

that "the business of insurance and every person engaged therein, shall be subject to the laws of the several states which relate to the regulation or taxation of such business." Further, under § 2(b) "No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance." After January 1, 1948, however, the Sherman, Clayton and Federal Trade Commission Acts "shall be applicable to the business of insurance to the extent that such business is not regulated by State law (*ibid.*).

This clear Congressional mandate that "the business of insurance and every person engaged therein" shall be subject to state statutes, forecloses all possible controversy as to the validity of State regulations of the numerous phases of the insurance business. For, "It is no longer debatable that Congress, in the exercise of the commerce power, may authorize the states, in specified ways, to regulate interstate commerce or impose burdens upon it." *International Shoe Co.* v. *State of Washington*, 66 Sup. Ct. 154, 158 (1945) [not as yet officially reported]. And see *Southern Pacific Co.* v. *Arizona*, 65 Sup. Ct., 1515 (1945) [not as yet officially reported], where Chief Justice STONE said (pp. 1520-1521):

> "Congress has undoubted power to redefine the distribution of power over interstate commerce. It may either permit the states to regulate the commerce in a manner which would otherwise not be permissible, * * * or exclude state regulation even of matters of peculiarly local concern which nevertheless affect interstate commerce."

It is submitted that Public Law 15 is an unequivocal reaffirmation of Congressional policy throughout the years to leave the regulation of the various aspects of the

insurance business to the several states. The Act was unquestionably prompted out of a desire to dispel any possible fears that the *South-Eastern* decision would alter that basic policy. (See House Committee on the Judiciary Report No. 143, February 13, 1945.)* By this enactment Congress clearly manifested its understanding, "that the nature of this subject is not such as to require its exclusive legislation" (*Cooley* v. *Board of Wardens*, 12 How. 299, 319 [1851]). And what was said by the Court in the *Cooley* case in another connection is equally applicable here (*ibid.*):

> "the nature of the subject when examined, is such as to leave no doubt of the superior fitness and propriety, not to say absolute necessity, of different systems of regulation, drawn from local knowledge and experience, and conformed to local wants."

The vast experience of the states in dealing with the business of insurance and their familiarity with local conditions, has fitted them admirably to deal effectively with the problems in the insurance field, and in a way so as to meet their particular sectional needs and requirements. As Chief Justice STONE observed in his dissenting opinion in *United States* v. *South-Eastern Underwriters Assn.*, *supra*, 322 U. S. at p. 580: "the states have developed extensive and effective means of regulation of the insurance business, often solving regulatory problems of a local character with which it would be impractical or difficult for Congress to deal through the exercise of the commerce power." In a field where supervision is such a vital need, the Courts should not overturn the settled practice of the years, particularly when Congress has plainly spoken.

---

*United States Code, Congressional Service (1945 No. 2), pp. 2.14 to 2.17.

Conclusion

Over a period of years the legislatures of the various states, by method of trial and error, have evolved regulatory systems for dealing with the business of insurance in its numerous aspects. Those systems have withstood the test of time and have proved, in the main, entirely effective.

To subscribe to appellant's contention would result, to a great extent, in nullifying salutary legislative provisions, geared to local needs, and designed to promote the security and welfare of the residents of the respective states. At the same time, in view of the complete absence of Federal regulation, it would leave unfettered phases of a business so vitally affected with a public interest. The *South-Eastern* decision requires no such result and, Congress, by the enactment of Public Law 15, has plainly reaffirmed the right of the states to regulate the insurance business.

The constitutionality of the California statutes here challenged should be sustained.

January 4, 1946.

Respectfully submitted,

NATHANIEL L. GOLDSTEIN,
Attorney General of the State of New York.

PERRIN G. JUDD,
Solicitor General,

PAUL A. SHAMES,
Assistant Attorney General, of Counsel.

Appendix

PUBLIC LAW 15
79TH CONGRESS—1ST SESSION—CHAPTER 20
Approved March 9, 1945

"An Act to express the intent of the Congress with reference to the regulation of the business of insurance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

The Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

Sec. 2. (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: *Provided*, That after January 1, 1948 the Act of July 2, 1890, as amended, known as the Sherman Act and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

Sec. 3. (a) Until January 1, 1948 the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, and the Act of June 19, 1936, known as the Robinson Patman Antidiscrimination Act, shall not apply to the business of insurance or to acts in the conduct thereof.

(b) Nothing contained in this Act shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

Sec. 4. Nothing contained in this Act shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act, or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938, or the Act of June 5, 1920, known as the Merchant Marine Act, 1920.

Sec. 5. As used in this Act the term 'State' includes the several States, Alaska, Hawaii, Puerto Rico, and the District of Columbia.

Sec. 6. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected."

FILE COPY

Office - Supreme Court, U. S.
FILED
JAN 7 1946
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1945

No. 274

F. O. ROBERTSON, *Appellant,*

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA, *Appellee.*

BRIEF OF AMICI CURIAE IN SUPPORT OF APPELLEE.

Appeal from the Superior Court of the State of California, in and for the County of Ventura.

FRANCIS V. KEESLING, SR.,
FRANCIS V. KEESLING, JR.,
EDWARD D. KEIL,
OF KEESLING & KEIL,
San Francisco, California.
Amici Curiae in Support of Appellee.

SIDNEY L. WEINSTOCK,
San Francisco, California.
Of Counsel.

Subject Index

		Page
I.	Introduction	1
II.	Statement of the case	4
III.	The complaint	5
IV.	The proceedings	6
V.	The issues	6
VI.	Argument	9
	A. The California licensing laws do not prohibit, do not discriminate against, do not unduly burden, the commerce here involved, and are a proper exercise of the police power	9
	B. The surplus line law permitted the placing of this risk with a nonadmitted insurer by or through a surplus line broker; it is a valid exercise of the police power	13
	C. California has not discriminated against insurers of the type Robertson represented	19
	D. A state may in the valid exercise of the police power prohibit the doing of any acts within the state in aid of an insurance transaction which is against the public interest, whether in interstate commerce or not	23
VII.	Conclusion	25

Table of Authorities Cited

Cases

	Pages
California v. Thompson, 310 U. S. 109	12, 26
Corier v. Fox, 274 U. S. 603	23
Euclid v. Amber Realty Co., 272 U. S. 365	23
Hall v. Geiger-Jones Co., 242 U. S. 529	24
Merrick v. Halsey & Co., 242 U. S. 568	24
State Farm Mutual Auto v. Duel, 324 U. S. 154	24
Wilson v. Maryland, 218 U. S. 173	23

Codes and Statutes

Arizona Code Annotated, 1939, 1943 Pocket Part, p. 402	22
Arizona Statutes, 1943, Ch. 95	22
Insurance Code:	
Chapter 9, Part 2, Division 2	20, 21, 22
Section 703	9
Section 1760	18, 23
Section 1763	13
Section 1776	10
Section 10510	21
Section 10830.5	20
Section 10830.6	20
Section 10831	20
Section 10870	20
Public Law 15, 79th Congress (59 Stat. 33)	25

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1945

No. 274

F. O. ROBERTSON,
Appellant,
vs.
THE PEOPLE OF THE STATE OF CALIFORNIA,
Appellee.

BRIEF OF AMICI CURIAE IN SUPPORT OF APPELLEE.

Appeal from the Superior Court of the State of California, in and for the County of Ventura.

I. INTRODUCTION.

This *amici curiae* brief is filed by us on behalf of the following organizations:

California Association of Insurance Agents

California State Association of Life Underwriters, Incorporated

Insurance Brokers Exchange of California

Insurance Brokers Society of Southern California

Surplus Line Association of California

The Society of Insurance Brokers

The members of the above associations and their affiliated associations handle a substantial portion of the insurance business transacted in the State of California by or with admitted and nonadmitted insurers.

They are convinced that the particular regulations at issue in this cause are essential for the protection of the safety, health, morals, good order and general welfare of the people of California, and therefore constitute a valid exercise of its police power. They are further convinced that even though such regulations affect interstate commerce, the protection of the safety, health, morals, good order and general welfare of the people of California requires such action, and that, consequently, such regulations are a valid exercise of the power of the State of California and are not a violation of the Federal Constitution.

The history of these organizations shows that over a period of many years they have endeavored so to conduct themselves and their activities that their members would be considered by the people of California as having a high professional standing. Among other things they have supported California's reasonable licensing and qualification regulations. Although there is admittedly a personal interest in a man's desire to build for himself a good reputation in his community, in this instance this personal interest results simultaneously in protecting the people of California. By reason of the endeavors of these associations and of the licensing and other regulations imposed by the State of California for the purpose of promoting higher ethical standards and safeguards, the people of California have a right to rely upon (1) the integrity and

competency of any person who seeks to interest them in insurance, (2) the fairness of the policy, and (3) the stability and financial capacity of the insurer. Obviously, if all such regulations and restrictions are removed the protection now afforded the people of California would no longer exist. It is unnecessary to comment upon the detrimental results on the safety, health, morals, good order and general welfare of the people of the State of California if this protection is removed and insurance claims are not paid at a time when the proceeds are essential to widows, minor children, insureds in their old age, and to businesses upon fire or liability loss insured against. No man should be more trustworthy than he who deals in insurance, for everyone is aware of the dangers to health and morals which accompany destitution, and certainly destitution would result in many instances were it not for the protection afforded by these regulations.

Having read appellant's opening brief and appellee's answering brief, we believe that it will be of assistance to the Court to summarize the situation and issues as they appear to us, including: (1) the facts which served as the basis for appellant's conviction; (2) the specific counts upon which appellant was convicted; (3) the history of the proceedings in the lower Courts; and (4) the specific regulations claimed by one or both parties to be involved, the purposes of and reasons for the regulations.

II. STATEMENT OF THE CASE.

On August 29, 1944, F. O. Robertson called on A. J. O'Lein in Ventura County, California, on behalf of the First National Benefit Society of Phoenix, Arizona. He explained the insurance offered by the latter, took an application from Mr. O'Lein, collected the membership fee, including the quarterly premium, and gave the Company's receipt therefor. (R. 19, 20.) Apparently Robertson forwarded the application to the insurer, for the policy was later delivered to O'Lein through the United States mail. (R. 12.)

The First National Benefit Society is, as shown by its policy (Exhibit 5, R. 29, 30, 31), an Arizona corporation. The policy provided for the payment of a fixed premium and for assessments in the event of insufficient funds to pay claims. The schedule of benefits indicates that the life of Mr. O'Lein was to be insured in the sum of $465.00, but other provisions reduced this amount to $155.00 during the first six months and $310.00 during the second six months the policy was in force. Suicide at any time was an excepted risk. The policy does not indicate that any reserves are required to be maintained. There is no evidence in the record as to the financial condition of First National.

In summary, Robertson in this state solicited, sold, and collected the premium for, life insurance in a foreign corporation that had not qualified for the transaction of insurance in this state, without himself procuring a license to do so.

We respectfully call the Court's attention to the fact that the record contains no evidence whatsoever as to whether or not

(1) First National could have qualified for admission to do business in California under existing California laws;

(2) First National could have qualified for admission to do business in California under California laws applicable prior to January 1, 1940;

(3) The insurance issued to O'Lein could have qualified for placement with any nonadmitted insurer by California surplus line brokers or by California agents or brokers through California surplus line brokers;

(4) Appellant could have obtained a surplus line broker's license or an agent's or broker's license and have legally participated in the O'Lein-First National insurance transaction under such a license.

III. THE COMPLAINT.

A complaint was filed against Robertson in the Justice's Court in Ventura County, State of California, for violating Section 703 (a) of the California Insurance Code, in that he did "wilfully and unlawfully act as an agent for a non-admitted insurer * * * in the transaction of insurance business in this State" (R. 1); and for violating Section 1642 of the same code in that he did "wilfully and unlawfully solicit and sell to A. J. O'Lein a policy of

insurance" while "not then and there being licensed by the Insurance Commissioner of the State of California to act as an insurance agent, broker or solicitor". (R. 1, 2.)

IV. THE PROCEEDINGS.

Robertson was found guilty on both counts. (R. 23.) He appealed to the highest appellate tribunal for that Court, the Superior Court of the State of California in and for the County of Ventura, and the judgment was affirmed on appeal. (R. 40.)

An appeal was allowed to this Court by the State Court (R. 48), and this Court entered its order noting probable jurisdiction on October 8, 1945. (R. 54.)

V. THE ISSUES.

As nearly as we can ascertain, appellant contends that Sections 703, 1642 and 10818 of the California Insurance Code, together with related sections, have the effect of prohibiting and discriminating against the transaction described above and constitute an unconstitutional prohibition and discrimination against interstate commerce. Appellant contends that he was therefore excused from complying with the California regulatory laws applicable to him as an insurance salesman. The theory underlying appellant's argument runs about as follows:

1. The First National cannot comply with the present California requirements for doing business in this state.

2. The plan upon which First National operates, and the policies which it issues, makes First National so similar to a class of insurers which were admitted prior to 1940 that the refusal of California to admit any additional insurers of that type subsequent to January 1, 1940, either domestic or foreign, constitutes an unconstitutional discrimination against First National.

3. The law governing the licensing and regulation of surplus line brokers discriminates against First National in this transaction, and neither those laws nor the laws governing the conduct of licensed agents (and brokers, though he does not mention them) would have permitted the transaction here involved.

4. These claimed prohibitions and discriminations are void as applied to First National, and appellant can therefore act for First National in this state without complying with the qualification laws applicable to him.

These contentions are beside the issue because:

(1) As will be later shown, appellant, if qualified, could have procured any one of three licenses, and, on his statement of the facts, have lawfully performed the acts for which he was convicted.

(2) First National is not here as a party raising these issues: it has not disclosed its financial condition, its methods of operation, nor the character of its management to the scrutiny of this Court so that the claims of appellant may be probed.

(3) First National, as a nonadmitted insurer, could have completed the transaction without the participation of an agent within this state.

To demonstrate the factual and analytical misapprehensions underlying the claims that California laws completely prohibit or discriminate against this transaction, it will be necessary to trace and discuss the scope and operation of these laws. In so doing we believe we shall demonstrate that the claimed unconstitutional prohibitions and discriminations against First National do not exist.

Our discussion of these laws will fall under four headings:

A. The California licensing laws do not prohibit, do not discriminate against, do not unduly burden, the commerce here involved, and are a proper exercise of the police power.

B. The surplus line law permitted the placing of this risk with a nonadmitted insurer by or through a surplus line broker; it is a valid exercise of the police power.

C. California has not discriminated against insurers of the type appellant represented.

D. A state may in the valid exercise of the police power prohibit the doing of any acts within the state in aid of an insurance transaction which is against the public interest, whether in interstate commerce or not.

VI. ARGUMENT.

A. THE CALIFORNIA LICENSING LAWS DO NOT PROHIBIT, DO NOT DISCRIMINATE AGAINST, DO NOT UNDULY BURDEN, THE COMMERCE HERE INVOLVED, AND ARE A PROPER EXERCISE OF THE POLICE POWER.

Appellant contends that

> "The California law is not merely one regulating the character and responsibility of an agent but absolutely prohibits such an agent from writing [insurance in] or assisting the company with which this risk was placed *from* [in] doing business, either interstate or intrastate in the State of California."

And that

> "There is no law in the State of California requiring an insurance agent or insurance solicitor to obtain a license to engage in that business separated from an agency to represent a particular company or employer. *No person could obtain a license in the State of California to perform any transaction for the insurer here involved or for any nonadmitted company.*" (Emphasis ours.)
>
> (Appellant's Opening Brief, 31.)

In making these statements counsel must have completely overlooked the provisions of California law under which the appellant, if qualified, could have obtained either a broker's license or an agent's license and have participated in the transaction here involved, without himself procuring a license as a surplus line broker.

Insurance Code Section 703, which makes it a misdemeanor for one not licensed as a surplus line broker to act as an agent for a nonadmitted insurer in this state

must be read in connection with Section 1776, which is a part of the Surplus Line Law.

Section 1776 provides in part as follows:

> "It is a misdemeanor for any agent or broker to solicit, negotiate or effect any insurance governed by the provisions of this chapter in nonadmitted insurers, except by and through a surplus line broker or special surplus lines broker licensed pursuant to this chapter."

The clear implication is that an agent or broker may effect such insurance *through* a surplus line broker. This implication is further strengthened by this provision:

> "* * * it is a misdemeanor for any surplus line broker * * * to accept, place, pay, or permit the payment of commission or other remuneration upon insurance placed by him under authority of his license to any person other than one holding a license to act as an insurance agent; insurance broker * * *"

If appellant had complied with Section 1642 and possessed either an agent's or broker's license he could have placed this risk with First National through a surplus line broker.

Appellant contends that he was acting in interstate commerce, that his acts did not constitute "doing business" in the state, and that the laws governing the qualification and conduct of agents and brokers cannot apply to him. There can be no question that he performed the duties of an insurance salesman within this state. (R., 9.) There is no doubt that the state may require a license of one to engage in an occupation in which character and competency are necessary to the protection of the public.

as a means of ascertaining whether he possesses the necessary qualifications. The laws governing the qualification and conduct of insurance agents and brokers are contained in the appendix and discussed below.[1]

---

[1]Since 1862 the laws of California have regulated insurance agents. (California Stats. 1862: Ch. 227: p. 243.) In 1923, as to agents, and 1921 as to brokers, these laws required the Insurance Commissioner to satisfy himself that an applicant has had experience or instruction in each of the kinds of insurance he proposed to write or that he will be given the necessary instruction within thirty days "to the end that the interests of the insuring public and of the insurers may be reasonably served". (Pol. C. Sec. 633, as am. 1923: 355: 731; Pol. C. Sec. 633a, as am. 1921: 882: 1669.)

The need for the protection of the insuring public from unqualified insurance salesmen has resulted in the expansion of these early license laws.

An insurance agent is one authorized by and on behalf of an insurer to transact insurance. (Ins. C. 31.) He must procure a license from the Insurance Commissioner before he may act as an insurance agent. (Ins. C. 1642.) To procure such a license an individual must satisfy the Commissioner that:

(a) He is properly qualified.
(b) Granting the license will not be against the public interest.
(c) He intends actively and in good faith to carry on the business of an insurance agent.
(f) The license is not being secured for the purpose of securing certain unlawful rebates.
(h) He is of good business reputation.

(The foregoing subdivisions are taken from Section 1649.)

In addition applicants are required to pass an examination "which shall be of sufficient scope to satisfy the Commissioner that the applicants have sufficient knowledge of, and are reasonably familiar with, the insurance laws of the State and with the provisions, terms and conditions of the insurance which the license will authorize them to transact and have a general and fair understanding of the obligations and duties of an insurance agent, broker or solicitor". (Ins. C. 1675, 1649 (g).)

The Commissioner may decline to issue the license if the applicant fails in these respects or if the Commissioner finds any one of a number of facts to exist as to the applicant, among which are:

(d) He "has engaged in a fraudulent practice or conducts his business in a dishonest manner".
(e) He "has shown that he was incompetent or untrustworthy in the conduct of his business or has by commission of a wrongful act or practice in the course of his

It is apparent that the objectives of these laws are to determine competency and integrity in advance, as far as is possible, and to eliminate those who later prove themselves deficient.

The state, aware of the inability of the average man to understand an insurance contract, would be remiss if it did not require those selling such contracts to possess some knowledge of them and at least a good business reputation.

These laws are applied to agents and brokers transacting insurance for and with both domestic and foreign insurers. They do not discriminate against foreign insurers and are well within the police power. (*California v. Thompson*, 310 U. S. 109.)

We have not overlooked appellant's contention that under the surplus line law even a licensed surplus line broker could not have placed the risk here involved with a non-admitted insurer. This contention is untenable. As it involves a construction of the surplus line law, its unsoundness will be shown in the following discussion of the surplus line law.

---

business exposed the public or those dealing with him to the danger of loss".

(f) He "has knowingly misrepresented the terms or effect of an insurance policy or contract while acting in the course of his business".

(The foregoing subdivisions are taken from Section 1731. The section is made applicable to applicants by Section 1732.)

B. THE SURPLUS LINE LAW PERMITTED THE PLACING OF THIS RISK WITH A NONADMITTED INSURER BY OR THROUGH A SURPLUS LINE BROKER; IT IS A VALID EXERCISE OF THE POLICE POWER.

Appellant states that O'Lein could not obtain insurance from any admitted insurer and contends that even a surplus line broker could not procure insurance from First National for O'Lein because the premium charge was less than that of an admitted insurer. (Appellant's Opening Brief, 8.)

Analysis of the Surplus Line Law completely refutes this contention. Insurance Code Section 1763 provides, in part:

> "1763. A surplus line broker may solicit and place insurance, other than as excepted in Section 1761, with nonadmitted insurers only if such insurance can not be procured from a majority of the insurers admitted for the particular class or classes of insurance. Such part of the insurance as can not be so procured may be procured from nonadmitted insurers, if the insurance is not placed in a nonadmitted insurer for the purpose of procuring a rate lower than the lowest rate which will be accepted by any admitted insurer * * *"

Appellant's premise is that O'Lein could not get insurance from any admitted insurer. If this were so, the condition of the first sentence of Section 1763, that insurance may be placed with a nonadmitted insurer only when it cannot be procured from a majority of the insurers admitted for the class, would have been met.

The second sentence above quoted is in the nature of a proviso to the first sentence. In effect the provision is that even though a majority of the admitted insurers will

not accept the risk, if any admitted insurer will accept it, the risk cannot be placed with a nonadmitted insurer for the purpose of procuring a lower rate. Note that the language is not that the risk cannot be placed at a lower rate. It is that it may not be placed with a nonadmitted insurer "for the *purpose* of procuring a lower rate than the lowest rate which will be accepted by any admitted insurer".

In this case it is obvious that if O'Lein could not procure insurance from any admitted insurer the *purpose* in placing it with a nonadmitted insurer would not be to procure a rate lower than the lowest rate at which the risk would be accepted by any admitted insurer, for there is no such rate. Rather the purpose would be to procure insurance at any rate.

Another complete and irrefutable answer to the contention that the risk could not have been placed with First National because its rate was lower than that of any admitted insurer is that there is no evidence in the record that the First National rate was lower than the lowest rate of any admitted insurer for the risk here involved.

The foregoing analysis demonstrates that if O'Lein could not procure insurance from any admitted insurer, a surplus line broker could have placed the risk with First National or any other nonadmitted insurer at any rate. It has been shown in our discussion of the general licensing laws that a person licensed as agent or broker under Section 1642 could have participated in the placing of this risk with any nonadmitted insurer through a surplus line broker. Thus, in the transaction involved in this case, if

O'Lein could not procure insurance from any admitted insurer, there were three licenses available to appellant and two methods by which he might lawfully have procured for O'Lein the insurance involved.

There is no evidence in the record that appellant ever applied for, was refused, or was qualified for, any of the three licenses under which he could have participated in the transaction for which he was convicted. There is no evidence in the record that he could not have qualified for and procured an appropriate license and thus lawfully have performed the acts he did. On this record appellant is in no position to claim that the Surplus Line Law unconstitutionally discriminated against him or First National.

Appellant's contention really is that in a case which is not before this Court and may never arise, the Surplus Line Law would unconstitutionally prohibit a surplus line broker from placing insurance with a nonadmitted insurer in either of two cases:

1. Where the insurance is obtainable from a majority of the admitted insurers.

2. Where the insurance is not obtainable from a majority of the admitted insurers and it is placed with a nonadmitted insurer for the purpose of procuring a rate lower than the lowest rate of any admitted insurer.

Because this is not such a case, the power of the state to impose these restrictions upon a surplus line broker is not in issue in this case. But even if these restrictions were in issue, they are a valid exercise of the police power.

As will be demonstrated in our discussion under heading D, page 23, for the purpose of protecting its people from an insurance transaction which is against the public interest the state may prohibit the doing of any acts within the state in aid of such a transaction.

The Surplus Line Law is an exception to the prohibition against persons acting within California for a nonadmitted insurer which has not demonstrated that the insurance it offers is in the public interest.

e exception is not made for the benefit of nonadmitted insurers. It is made for the benefit of the people of the state. If the insurance can be obtained from a majority of the admitted insurers, a surplus line broker cannot place it with a nonadmitted insurer under any conditions. The reason is obvious: if a majority of the admitted insurers are willing to accept the risk, the Legislature has a right to assume that there is nothing unusual or extra hazardous about it, and it is reasonable for the Legislature to refuse to permit a licensee to aid an insurer that has not demonstated that its insurance is sound.

If a majority of the admitted insurers cannot or will not accept the risk two possibilities are evident: (1) The amount at risk is so large that the admitted insurers cannot absorb all of it; or (2) The hazard is such that the risk is not desirable to the majority.

Where the risk is so large that all of it cannot be placed with admitted insurers, it is obvious that the purpose of placing the excess with nonadmitted insurers is to procure the best insurance available under the circumstances. Rate is immaterial.

Where the risk is not desirable to the majority of admitted insurers but any admitted insurer will accept it, there is a restricted local market. The surplus line broker is the convenient door to a broader market. He is licensed by the state. To the average man he bears the seal of approval of the state. Such a man would believe that the insurance a state licensee sells must be sound or the state would not permit the licensee to sell it.

But the state has no certain way of knowing that the nonadmitted insurance is sound. It has therefore adopted the best means available. If a surplus line broker places insurance with a nonadmitted insurer at a rate equal to or higher than that of an admitted insurer an inference may be drawn that he is placing it with the nonadmitted insurer because he is seeking insurance more suitable to his client's needs than is available from the limited admitted market.

Such an inference need not be drawn if the surplus line broker places the insurance with a nonadmitted insurer at a lower rate. It is then possible that he is selling inferior insurance with the seal of state approval. If the surplus line broker can demonstrate that the procurement of the lower rate is not the sole purpose of placing the insurance with the nonadmitted insurer he may place the insurance at the lower rate. If he cannot, the state is justified in not permitting the use of its seal of approval for the placing of insurance with insurers that have not met its tests, for if the state were to permit surplus line brokers to sell insurance in nonadmitted insurers at rates lower than the lowest available from admitted insurers *solely* for the purpose of procuring the lower rate it would expose its people to the very dangers its regulatory laws

seek to prevent. The choice between admitted insurers that have met the state's requirements and the nonadmitted insurers that have not would not be made on the basis of the quality of the insurance or other valid factors, but on price alone.

It is no answer to suggest that in a particular case the quality of the nonadmitted insurance at the lower rate may be equal to that of the admitted insurance. It may be. Even where a majority will accept the risk, the nonadmitted insurance may be "just as good" but a surplus line broker cannot place it at any rate. Such consequences result whenever a line is drawn. It is sufficient that there be some reasonable relationship between the means chosen and the object. In any case the *insured* may place insurance directly with a nonadmitted insurer, but in doing so he is not relying on the state to protect him. The nonadmitted insurer has failed to meet the supervisory standards which the state imposes on admitted insurers. In addition, it offers the insurance at a rate lower than that offered by an insurer so admitted. In view of the inevitable connection between rate and solvency, where these circumstances concur, the state may properly, under its police power say to the citizen, "You may take your own risks, but this transaction is one in which our licensees, who are required in their persons and in their business to meet certain standards, should not participate. Do your business your own way. But the state will not lend the prestige of the standards applicable to its licensees to the transaction." (Ins. C. 1760.)

The nonadmitted insurer cannot complain, for the exceptions are not made for its benefit. If it is not able or willing to meet the state's tests, it is not entitled to act through licensees approved by the state.

C. CALIFORNIA HAS NOT DISCRIMINATED AGAINST INSURERS OF THE TYPE ROBERTSON REPRESENTED.

Appellant contends that "a local statute which discriminates * * * between local companies and those engaged in interstate commerce is void" and that "the law of the State of California which will admit only those life insurance companies whose bookkeeping system is on a legal reserve basis in that state, and is, at the same time, allowing a group of insurance companies in that state to operate on the non-legal reserve basis is void as applied to transactions in interstate commerce". (Appellant's Opening Brief, p. 10.) His conclusion is that this makes void the laws requiring the qualification and regulation of persons engaged in the sale of insurance in California.

We have already indicated these contentions are not at issue because appellant could have procured any one of three licenses and have lawfully performed the acts thereunder for which he was convicted and because there is no evidence in the record upon which it can be determined whether or not the company would be entitled to admission. There being no such evidence, certainly appellant cannot properly contend that California's admission laws apply to and discriminate against First National. Even if appellant's contentions were correct and appellant's contentions were at issue the following discussion will show that there was and is no unconstitutional discrimination.

From the policy (R. 29-31) it is apparent that this insurer issues policies for a fixed premium but is entitled and required to assess its policyholders if necessary to

pay claims. Appellant implies that it operates on a non-legal reserve basis. (Appellant's Opening Brief, p. 10.)

Prior to 1940 an insurer operating on a non-legal reserve basis and issuing policies on that basis could be organized in this state and foreign insurers of that type could be admitted under Chapter 9, Part 2, Division 2, of the Insurance Code. As is pointed out in detail in appellee's brief (pp. 24-37) the experience in California with this type of company and policy had been very unsatisfactory and the legislature from time to time had strengthened the controls applicable and in 1939 finally concluded to prohibit the admission after January 1, 1940 of any more insurers of that type, whether domestic or foreign. It is claimed by appellant that these laws discriminate against foreign insurers because they permit the continued operation of this type of insurer under Chapter 9. The implication is that there is no difference between appellant's company and those that are now operating under Chapter 9. This is not the case, as will be seen from the following controls which have been made applicable to the Chapter 9 insurers admitted before 1940 and now operating in California.

In 1941 Section 10870 of the Insurance Code was amended to require that on all policies issued by Chapter 9 companies after December 31, 1941, reserves must be maintained on *a legal reserve basis.* In addition other salutary controls have been enacted. Section 10830.5 limits the amount of liabilities that may be assumed on any one life risk to $3000, or ten per cent of the surplus of the insurer. Section 10830.6 applies a similar limitation to disability insurance. Section 10831 requires the

filing of "management or general agency contracts" with the Insurance Commissioner, and Section 10831.5 regulates the payment of salaries in excess of $3600 annually. Section 10832 seeks to remedy abuses that have been found to exist in the securing of proxies. Other sections regulate the policy forms, investments and maintenance of assets.

Except for the $200,000 surplus requirement applicable to other mutual insurers (Ins. C. 10510), this type of insurer is now subject to even greater control than are other mutual insurers. Apparently appellant contends that because California permitted existing companies to continue, albeit under much stricter control and under the requirements of higher standards, an unconstitutional discrimination against the company he represented resulted. Any difference in treatment has a reasonable and justifiable basis. The legislature was confronted with the fact that thousands of persons had policies issued by this type of carrier. Many had held them for a number of years and were, through the ordinary vicissitudes of life and the passage of time, uninsurable. If the legislature had the power to do so, and had revoked the corporate charters of these insurers, these people would have been left without insurance. As has been seen the legislature chose to ameliorate the existing conditions as much as possible.

As a result, since 1940 the status of admitted Chapter 9 companies has changed considerably. California tried to handle the situation in a fair and practical manner for the best interests of the foreign and domestic policyholders of those foreign and domestic Chapter 9 companies, and at the same time to afford adequate protec-

tion to new policyholders. This historical background discloses that there is a reasonable basis for distinction between companies already operating in California prior to 1940 and those seeking admittance subsequently. It further discloses that under the present controls the existing Chapter 9 companies are operating under such higher standards as to place them in a much different status than formerly. There is no evidence in the record as to the financial condition of the First National or as to the standards it is required to meet in Arizona. A search of the Arizona statutes has failed to disclose any controls comparable to those presently contained in Chapter 9 or even to those applicable prior to 1940. How then can it be said that California has unconstitutionally discriminated against the First National? (For a comparison of the two statutes, see Arizona Statutes, 1943, Ch. 95; Arizona Code Annotated, 1939, 1943 Pocket Part, P. 402.)

The appellant has not shown that the First National could qualify for admission under present Chapter 9 nor under Chapter 9 as it existed prior to 1940, and has not sustained the burden of demonstrating an unconstitutional discrimination.

Any contention that, because in the public interest it has been deemed necessary to permit existing insurers to continue to operate, a state must permit new ones to be formed and admitted on the same basis would prevent all progress toward higher standards and better business practices. The Courts have approved the imposition of higher standards to new entrants. This is a common occurrence when higher examination standards or educa-

tional requirements are imposed on new applicants, or building code requirements have been made more strict. (See *Wilson v. Maryland*, 218 U. S. 173; *Euclid v. Amber Realty Co.*, 272 U. S. 365; *Corier v. Fox*, 274 U. S. 603.)

D. A STATE MAY IN THE VALID EXERCISE OF THE POLICE POWER PROHIBIT THE DOING OF ANY ACTS WITHIN THE STATE IN AID OF AN INSURANCE TRANSACTION WHICH IS AGAINST THE PUBLIC INTEREST, WHETHER IN INTERSTATE COMMERCE OR NOT.

We have shown that under the law pertaining to the facts in this case, the state did not prohibit the transaction involved. It merely required one acting within the state in such a transaction to possess one of several licenses and to comply with applicable regulations. In addition, First National could have completed the transaction directly with O'Lein by mail without sending a salesman to urge him to buy, and no California law would have been violated. (Insurance Code, Section 1760.)

Thus it cannot be said that the state completely prohibited First National from engaging in interstate commerce in insurance with persons in this state. At most these laws regulated, and to that extent necessarily and properly interfered with, appellant's participation in the actual transaction involved here.

Appellant as an individual was prohibited from engaging in this transaction because he had not demonstrated his qualifications for and obtained any one of three licenses.

Even if the California law entirely prohibited persons within this state from participating or assisting in the sale

of the insurance here involved, it does not follow that such a prohibition would be invalid.

California has established financial requirements as a condition precedent to the admission of domestic and foreign insurers and enacted certain laws as to the conduct of that business. This is entirely proper. (*State Farm Mutual Auto v. Duel*, 324 U. S. 154.)

Similar exercise of the police power in order to protect persons within a state from being induced to purchase worthless securities or securities of doubtful value has been sustained by this Court. (*Hall v. Geiger-Jones Co.*, 242 U. S. 529; *Merrick v. Halsey & Co.*, 242 U. S. 568.) In the Blue Sky cases the Court sustained statutes authorizing an executive agency to prohibit the sale within the state if it is found "that the sale of such securities would work a fraud upon the purchasers thereof". (37 S. Ct. 227, at 232.) The California legislature after an exhaustive study as demonstrated in appellee's brief (pp. 24-37) has determined that the sale of insurance backed up only by less surplus and reserves than its present requirements has been against the best interests of the insuring public.

On the record before this Court there is no showing that the action of the legislature was arbitrary, oppressive or unreasonable. The legislature was exercising the same power that this Court has held that the legislature may delegate to an executive officer: the power to prevent fraud. The sale of a security may work a fraud on the purchaser because there is no real value behind it; how much greater is the fraud where there is no value to back up an insurance contract. In the case of a security the purchaser loses only the purchase price. Where in-

surance proves worthless, the loss of the premium is immaterial compared to the loss of the expected proceeds or indemnity, if the event insured against occurs.

We are not contending that the legislature can prohibit all intrastate and interstate commerce in insurance. The legislature has not prohibited First National from transacting insurance within the state. It has merely set reasonable standards for the transaction of life insurance within the state. The record is bare of any suggestion that First National is or is not capable of complying, or has ever sought to comply, with those standards.

Public Law 15, 79th Congress (59 Stat. 33) is quoted in appellee's brief, and is discussed by both parties. While the law was not enacted prior to appellant's acts, it is a definite declaration by Congress that the regulatory insurance laws of the states not only are and will continue to be, but *have been*, essential to the public interest.

VII. CONCLUSION.

There is no evidence that the type of policy issued to O'Lein and the rate charged therefor wouldn't have qualified such insurance for placement with a nonadmitted insurer by California surplus line brokers or by California agents or brokers through California surplus line brokers.

There is no evidence that appellant could not have obtained a surplus line broker's license or an agent's or broker's license.

There is no evidence that appellant could not have legally participated in the O'Lein-First National Insurance transaction under such licenses.

There is no evidence that First National was a class of insurer which would have been denied admission to do business in California under California laws.

There is no evidence that First National at the time of the transaction could have qualified for admission under laws applicable prior to January 1, 1940.

The O'Lein-First National transaction could have been completed by direct dealings between insured and insurer.

Therefore, it cannot properly be contended that (1) California's Surplus Line law unconstitutionally prohibited *First National* from engaging in interstate commerce, or unconstitutionally discriminated against *First National* in favor of other nonadmitted insurers, or that (2) California's admission laws unconstitutionally prohibited *First National* from engaging in interstate commerce or unconstitutionally discriminated against *First National* in favor of admitted insurers.

On the record, therefore, the only question at issue is whether California can constitutionally require a person to meet reasonable competency and trustworthiness standards as conditions precedent to participating in insurance transactions between a California resident and a foreign nonadmitted insurer. We contend that California has the power to do so. (*California v. Thompson*, supra.)

Although we have taken the position that appellant's contentions are for the most part erroneous and that all the other issues he seeks to raise are not before the Court, we have nevertheless gone outside the issues here involved and demonstrated that:

1. The Surplus Line law does not unconstitutionally prohibit interstate commerce.

2. It does not unconstitutionally discriminate between various classes of nonadmitted insurers.

California's admission laws which prohibit insurers not admitted to do business in California before January 1, 1940 from doing an assessment type insurance business through persons in California without meeting California's minimum reserve and surplus requirements, are not an unconstitutional prohibition and do not unconstitutionally discriminate against nonadmitted insurers.

The California insurance laws discussed herein do not violate the commerce clause, the equal protection clause, or any other provision of the Constitution of the United States, but, on the contrary, they are the kind of state legislation which this Court has found to be essential for the protection of the public, in the absence of conflicting federal legislation covering the same field.

We submit, therefore, that the judgment should be affirmed.

Dated, San Francisco, California,
January 2, 1946.

Respectfully submitted,

FRANCIS V. KEESLING, SR.,
FRANCIS V. KEESLING, JR.,
EDWARD D. KEIL,
OF KEESLING & KEIL,
Amici Curiae in Support of Appellee.

SIDNEY L. WEINSTOCK,
Of Counsel.

(Appendix Follows.)

INSURANCE CODE SECTIONS.

31. "Insurance agent" means a person authorized, by
d on behalf of an insurer, to transact insurance.

33. "Insurance broker" means a person who, for com-
nsation and on behalf of another person, transacts
surance other than life with, but not on behalf of, an
surer.

39. If any provision of this code, or the application
ereof to any person or circumstance, is held invalid, the
mainder of the code, or the application of such, pro-
ion to other persons or circumstances, shall not be
fected thereby.

700. A person shall not transact any class of insur-
ce business in this State without first being admitted
r such class. Such admission is secured by procuring
certificate of authority from the commissioner. Such
rtificate shall not be granted until the applicant con-
rms to the requirements of this code and of the laws
this State prerequisite to its issue. After such issue
e holder shall continue to comply with the require-
nts as to its business set forth in this code and in
e laws of this State.

703. Except when performed by a surplus line broker,
e following acts are misdemeanors when done in this
ate:

(a) Acting as agent for a nonadmitted insurer in the
nsaction of insurance business in this State.

(b) In any manner advertising a nonadmitted insurer in this State.

(c) In any other manner aiding a nonadmitted insurer to transact insurance business in this State.

In addition to any penalty provided for commission of misdemeanors, a person violating any provision of this section shall forfeit to this State the sum of five hundred dollars ($500), together with one hundred dollars ($100) for each month or fraction thereof during which he continues such violation.

ARTICLE 1. AGENTS', BROKERS' AND SOLICITORS' QUALIFICATIONS. (Ch. 5, Pt. 2, Div. 1.)

1639. The purpose of this chapter is to protect the public by requiring and maintaining professional standards of conduct on the part of all insurance agents and insurance brokers acting as such within this State.

(Added by Stats. 1941, Ch. 23. In effect February 4, 1941.)

1640. This article shall not affect:

(a) Employees of title insurers or persons engaged in the business of examining, certifying, or abstracting titles when no commission is paid such employees or persons transacting insurance.

(b) Mortgage insurers or their solicitors or agents.

(c) Fraternal benefit societies or their solicitors or agents.

(d) Reciprocal or interinsurance exchanges, or their attorneys, solicitors, agents or employees, except as provided by Chapter 3 of this part.

(e) Any insurer admitted to transact life insurance, or life and disability insurance, or the agents, solicitors or employees of any such insurer, or agents licensed under the provisions of Article 2 of this chapter.

(f) Surplus line brokers.

(g) Persons whose employment does not include the solicitation, negotiation, or affecting of contracts of insurance and who do not sign policies or other evidences of insurance.

(h) Officers of insurers and salaried traveling employees of the type commonly known as special agents, while performing duties and exercising functions such as are commonly performed by special agents, if such persons:

(1) Do not effect insurance.

(2) Solicit or negotiate insurance only as a part of and in connection with the business of an insurance agent or broker licensed under this chapter.

(i) Persons directly employed by an insurer at its home or branch office, who do not solicit or negotiate insurance and who receive no commissions, and who may as part of their regular employment sign policies or other evidences of insurance.

(j) Bail agents and bail solicitors.

(Amended by Stats. 1937, Ch. 652; by Stats. 1937, Ch. 654; and by Stats. 1941, Ch. 673.)

1641. The provisions of this article shall not prohibit a broker licensed thereunder from transacting life insur-

ance and receiving a commission therefor if he is licensed to transact life insurance.

(Amended by Stats. 1941, Ch. 23. In effect February 4, 1941.)

1642. A person shall not act as an insurance agent, broker, or solicitor until a license is obtained from the commissioner, authorizing such a person so to act.

1643. Such license shall be obtained only on a written application in a form prescribed by the commissioner, stating the kinds of insurance which the applicant desires to transact. The commissioner may decline to act upon an incomplete or defective application until amendments or an amended application are filed with him which complete the prescribed form and are properly executed. He may prescribe the form of such amendments or amended application.

(Amended by Stats. 1937, Ch. 652.)

1644. Every applicant for a license to act as an insurance broker shall file with the application or maintain in effect a satisfactory bond to the people of the State of California, duly executed by an admitted surety insurer, approved by the commissioner in the amount of one thousand dollars ($1,000). Such bond may be continuous in form and the total aggregate liability on such bond shall be limited to the payment of one thousand dollars ($1,000). Such bond shall be contingent on the accounting by the broker to any person requesting the broker to obtain insurance, for moneys or premiums collected by the broker for insurance other than life.

Said bond shall remain in force and effect until the surety is released from liability by the commissioner, or until said bond is canceled by the surety. The surety may cancel said bond and be relieved of further liability thereunder by delivering 30 days' written notice to the commissioner. Such cancellation shall not affect any liability incurred or accrued thereunder prior to the termination of said 30-day period.

(Amended by Stats. 1937, Ch. 732.)

1645. Every application by a copartnership, association or corporation for a license to act as an insurance agent or broker shall state the names of the members, officers or employees of the applicant who intend to exercise the power and perform the duties of the agency or brokership. Such application shall also contain an agreement by all of the members of the copartnership or of an officer empowered to bind the association or corporation, that in the event the applicant is granted the license, only those persons designated in the license will transact insurance authorized under the license. A nonresident of this State shall not be named to exercise such powers in respect to any such licensee.

(Amended by Stats. 1939, Ch. 325.)

1645.5. After June 30, 1942, unincorporated associations and nonprofit corporations which do not possess a valid and unrevoked certificate of authority issued pursuant to Part 5, Division 2, of this code are not eligible for license or for renewal of license under this article unless all the members of the association or nonprofit

corporation possess individual licenses to transact insurance or are named and qualified to exercise the agency or brokership powers of the association or nonprofit corporation at all times.

The license of an association or nonprofit corporation may be revoked or suspended whenever it appears to the commissioner that the condition of its membership is such that it would not be eligible for license as a new applicant.

(Added by Stats. 1941, Ch. 23. In effect February 4, 1941.)

1646. The natural persons named in an application under Section 1645 shall, if the applicant is not already licensed as an insurance broker or agent, take and pass the qualifying examination provided by this code. Where one or more of the persons named fails to pass the examination, the license may be issued with the agreement of the applicant that the names of such persons be omitted from the list of those empowered to transact insurance under the license.

1647. Whenever a copartnership, association or corporation, licensed as an agent or broker, desires to change, or add to, the persons who are to transact insurance under authority of its license, it shall immediately notify the commissioner, requesting that indorsement issue changing its license accordingly.

(Amended by Stats. 1937, Ch. 652.)

1648. The commissioner shall require that the qualifying examination provided by this code be taken by

any persons named by such a business organization to transact insurance who are not named in the last previous application of the applicant and who, if they were applying for individual licenses to exercise the agency or brokership powers possessed by the business organization, would be required to take and pass the qualifying examination.

(Amended by Stats. 1941, Ch. 23. In effect February 4, 1941.)

1648.3. Before being permitted to take the qualifying examination for license to act as an insurance broker or to qualify to exercise the brokership powers of a corporation, association or partnership, an applicant or a person named to exercise such brokership powers shall have either:

(a) Successfully completed a course or courses of study approved as to method of instruction and content by the commissioner, covering the principal branches of the insurance business and requiring not less than 50 hours of classroom work or the equivalent thereof in correspondence work; or

(b) Been regularly employed by an insurance company, insurance broker, or an insurance agent, or licensed under this article, for a period or periods aggregating not less than one year during the three years next preceding the date of application, in responsible insurance duties relating to classes of insurance other than life; provided, that time spent in military service shall be excluded in computing such three-year period; and he

shall submit affidavits stating facts which show compliance with this requirement.

Such course or courses either (1) shall be given by a degree conferring college or university which has, when such course is taken by such individual, a curriculum or curricula approved by the commissioner, whether such course be given as part of any such curriculum or separately or (2) shall have been given by any other institution which maintains equivalent satisfactory standards of instruction, and which shall have been approved for such purpose by the commissioner.

The commissioner shall not approve any curricula, whether given by a degree conferring college or university, a correspondence school, or any other institution, unless it includes instruction in: Classes of insurance except life insurance; the fundamental characteristics of each of the types of insurers admitted to transact insurance in California; the laws of the State of California relating to the transaction of insurance by insurance agents, brokers and solicitors; and such other subjects as the commissioner finds to be necessary to qualify a person to discharge his responsibilities as an insurance broker or to exercise brokership powers.

This section shall be applicable to all persons required to take the qualifying examination for a license to act as an insurance broker, or to qualify to exercise the brokership powers of a corporation, association or partnership, who make application for said licenses or to so qualify after January 1, 1944.

(Added by Stats. 1943, Ch. 330.)

1648.5. The commissioner shall not grant a license to act as an agent or broker:

(a) To any individual who is neither a citizen or national of the United States nor an applicant for such citizenship who has lawfully and properly filed a proper declaration or application therefor in a Court constituted by a law of the United States, unless such person is licensed under this chapter when this section takes effect.

(b) To any minor.

(c) To any copartnership, association or corporation if any person named in the application to exercise agency or brokership powers can not be licensed under subdivision (a) or (b) of this section.

(Added by Stats. 1937, Ch. 652.)

1648.6. Resident salaried employees and officers, exclusive of directors, of admitted insurers may be granted a limited broker's license. The limited broker's license authorizes the transaction of insurance as a broker on risks not located in this State.

Such employees or officers shall not be licensed as brokers other than as provided in this section.

(Added by Stats. 1939, Ch. 221; amended by Stats. 1941, Ch. 23. In effect February 4, 1941.)

1648.7. Licenses authorized by this chapter shall not be issued to any insurer or reciprocal or interinsurance exchange.

(Added by Stats. 1941, Ch. 23. In effect February 4, 1941.)

1649. The commissioner shall investigate the qualifications of the applicants. Except as otherwise prescribed in this article he may issue the license applied for to an applicant on a showing satisfactory to him that the following facts exist:

(a) The applicant is properly qualified to perform the duties of an insurance agent, broker, or solicitor.

(b) Granting the license will not be against public interest.

(c) The applicant intends actively and in good faith to carry on the business of insurance agent, broker, or solicitor.

(d) In the case of a corporate applicant, the articles of incorporation permit it to act as an insurance agent or broker.

(e) In the case of an association or copartnership applying for such a license, its articles of association or agreement of partnership do not forbid it from so acting.

(f) The license is not being secured for the purpose of writing of insurance as to which the right to take commission is limited by Section 760, at a cost less than specified in such contracts.

(g) In the case of a person who has not held a license to act as an insurance agent, broker, or solicitor, covering the license period preceding the period covered by the license applied for, the applicant has within six months preceding the date of issue of the license, taken and passed the qualifying examination provided in this article.

(h) The applicant is of good business reputation.

(Amended by Stats. 1937, Ch. 652.)

1650. Every license to act as an insurance agent, broker, or solicitor, as the case may be, shall state on its face:

(a) The name of the licensee.

(b) That he is licensed so to act.

(c) The location of the principal office in this State of the licensee by street address, city, or town, if any, and by county.

(d) The conditions, if any, on which the license is issued.

1651. Every license to act as such an agent, broker, or solicitor shall be prominently displayed in the office of the licensee.

1652. The insurance solicitor's license shall be issued to, and shall remain in the possession of, the employing agent or broker until canceled, or until the licensee withdraws from the employ. Immediately upon the withdrawal the employer shall return the solicitor's license to the commissioner for cancellation. If unable to return the license, the employer shall furnish evidence of loss or destruction satisfactory to the commissioner, who shall thereupon cancel the license and shall enter the cancellation in his records. After such cancellation and upon notifying the commissioner in writing of change of office, or change of employer, the solicitor is entitled to the issuance without charge of a new license for the unexpired period.

1653. A solicitor shall not represent that he is an insurance agent for any insurer, or that he is an insurance broker.

1654. A license to act as an insurance solicitor shall not be issued until the applicant files with the commissioner a written statement of an insurance agent or broker, stating that the applicant, when licensed, will be employed by the broker or agent, with the duties and powers of an insurance solicitor.

1655. Pending the issuance of a solicitor's license after examination of the applicant, and during periods when it is canceled by termination or change of employment, the applicant or solicitor, upon request, is entitled to a certificate from the commissioner stating that a license will be issued to its holder upon the filing of the required statement of employment.

1656. Before receiving a license to act as an insurance agent, an applicant shall file with the commissioner a document executed by an insurer or its authorized representative admitted to do insurance other than life, appointing the applicant, upon licensing, its agent in this State. Such appointment shall, by its terms, continue in force until a document executed by the insurer, its representative, or the applicant or appointee, expressly terminating such appointment is filed with the commissioner.

(Amended by Stats. 1937, Ch. 652.)

1656.5. Documents executed by an insurer or its authorized representative appointing the applicant as its agent in this State shall be filed with the commissioner

in duplicate. The commissioner shall retain one copy of the document and forward the other copy to the agent at his last known address as shown on the records of the commissioner. At any time an agent may notify the commissioner that he is no longer acting as agent for a specified insurer, and the commissioner shall thereupon cause his records to reflect that fact.

(Added by Stats. 1943, Ch. 857.)

1657. In order to terminate the appointment of an agent, an insurer shall file with the commissioner in duplicate a notice of termination of appointment and the commissioner shall forthwith transmit a copy of such termination to the agent whose appointment is thus terminated. Upon receiving notice of the termination of the agency, from the licensee or from the licensee's principal, the commissioner shall cancel the agency appointment.

(Amended by Stats. 1943, Ch. 857.)

1658. Pending the filing of an appointment with the commissioner, whether after termination of an agency or otherwise, a person otherwise qualified under the provisions of this article to act as an insurance agent, is entitled to have issued to him a certificate executed by the commissioner and stating that upon the filing of such an appointment a license to act as insurance agent will be issued.

1659. Any insurance agent, broker or solicitor, upon paying the fee therefor and filing the proper bond, statement of employment, or appointment, as the case may

be, is entitled to be licensed to act in one of the other two specified capacities. But only a natural person may act as a solicitor, and a person shall not at the same time be licensed to act as a solicitor and also as an agent or as a broker.

(Amended by Stats. 1941, Ch. 311.)

1660. An insurance agent may be a broker with relation to insurers for which he is not an agent, but in order to act as a broker he must also be licensed as such.

1661. In determining the period, prescribed in Section 1649, within which the applicant must have held a license or taken examination in order to be licensed, full time service in the armed forces of the United States or in any governmental capacity during time of war, or continuously but commencing during time of war, shall be excluded.

(Amended by Stats. 1937, Ch. 652.)

1662. (Amended by Stats. 1937, Ch. 652; repealed by Stats. 1939, Ch. 928.)

1663. Every insurance broker or agent shall keep complete records of all business done under the authority of his license, and of the collection of all premiums and the names of all persons licensed under this code from whom business is accepted or to whom commissions are promised or paid. These records shall be open to inspection or examination by the commissioner at all times.

The commissioner may at any time require the broker or agent to furnish to the commissioner, in such manner

and form as the commissioner requires, any information required to be kept in such records.

(Amended by Stats. 1937, Ch. 652.)

1664. Except in the case of a nonresident broker, every insurance agent or broker shall maintain an office in this State for the transaction of business. Applications for license or renewal of license as insurance agent or broker shall specify the address of the office at which the records required by Section 1663 are kept. The records shall be kept at such address. A licensee shall notify the commissioner in writing of any change in such address.

(Amended by Stats. 1941, Ch. 23. In effect February 4, 1941.)

1665. (Repealed by Stats. 1937, Ch. 652.)

1666. When licenses, certificates pending issue of licenses, or certificates of convenience have been issued by the commissioner in accordance with this article, the commissioner shall compile the names and addresses of agents so certified. Such compilation shall be made in such a manner that the names of duly authorized agents and their respective insurers may be conveniently ascertained. The commissioner shall allow any person, upon request, to inspect the list thus compiled.

1667. (Repealed by Stats. 1937, Ch. 652.)

1668. A person whose license is revoked by the commissioner shall not be issued any license under this article for a period of one year after the revocation. If any such license issued to a copartnership, association or cor-

poration is revoked, a member of the copartnership or officer or director of the corporation shall not be entitled to such a license for the same period of time, unless the commissioner finds that such member, officer, or director was not in any way personally at fault in the matter on account of which the license was revoked.

1669. (Repealed by Stats. 1937, Ch. 652.)

1670. A violation of any of the provisions of this article by any insurance solicitor or employee of any licensed agent or broker shall not cause a suspension or revocation of the license of the employer of such solicitor or employee unless it appears to the commissioner, upon a hearing, after reasonable notice to such employer, that the employer permitted such violation. This provision shall not relieve the employer from civil liability or his surety from liability under the bond filed as provided in this article.

(Amended by Stats. 1941, Ch. 23. In effect February 4, 1941.)

1671. The completion or delivery of a declaration or certificate of coverage under a running inland marine insurance contract evidencing coverage thereunder does not require licensing under this code, if

(a) The person completing or delivering such certificate or declaration does not receive any commission or such insurance, directly or indirectly, and

(b) The person completing or delivering such certificate or declaration or his employer has an insurable

interest in the risk evidenced by the certificate or declaration.

(Amended by Stats. 1941, Ch. 23, and Stats. 1941, Ch. 673.)

1671.2. The following employees of a licensed insurance agent or broker shall not be considered as acting as insurance agents, brokers or solicitors:

(a) Those who are regularly salaried administrative or clerical employees and who devote substantially all of their services to activities other than the solicitation of insurance from the insuring public and who receive no commission on insurance, directly or indirectly.

(b) Those who are salesmen who devote substantially all of their activities to selling merchandise and whose solicitation of insurance is limited only to the quoting of a premium for insurance, to be included in the purchase price, covering the interest retained in such merchandise by the seller, and who receive no commission on insurance, directly or indirectly.

(Added by Stats. 1941, Ch. 673.)

1672. Upon the application of a nonresident that is duly licensed to transact insurance other than life under the laws of the State wherein such an applicant resides, if the State in which the applicant resides does not prohibit residents of this State from acting as an insurance broker therein, the commissioner may issue to such applicant a license to act as an insurance broker in this State upon the payment of the fee prescribed in this article. The issue of such license shall be subject, how-

ever, to the same qualifications, requirements and restrictions as apply to residents of this State, except that the applicant shall not be required to maintain an office in this State for the transaction of an insurance business.

1673. The commissioner may, in his discretion, accept in lieu of examination of such nonresident applicant, a certificate of the insurance authority of the State of the applicant's residence to the effect that the applicant has the following qualifications:

(a) Experience or training.

(b) Reasonable familiarity with the insurance laws of this State and with the provisions, terms and conditions of the insurance which the applicant proposes to transact.

(c) A fair and general understanding of the obligations and duties of an insurance broker.

1674. The commissioner shall conduct or arrange for a written examination, to be given at least twice a year upon questions, prepared by the commissioner, as to the qualifications of applicants or members or officers of applicants to act as insurance agent, broker or solicitor.

1675. The examination shall be of sufficient scope to satisfy the commissioner that the applicants have sufficient knowledge of, and are reasonably familiar with, the insurance laws of the State and with the provisions, terms and conditions of the insurance which the license will authorize them to transact and have a general and fair understanding of the obligations and duties of an insurance agent, broker or solicitor.

(Amended by Stats. 1937, Ch. 652.)

1676. A license shall not be issued under this article to any person required to pass an examination, until such examination has been passed, but the commissioner may issue to an applicant, who has never theretofore held or been named in a license or certificate of convenience a certificate of convenience, operative for a period not extending beyond six months from issuance permitting such applicant to act as agent, or solicitor, as the case may be, pending a fulfillment of the examination requirements. Such certificate does not permit the holder thereof to transact insurance, nor to participate directly or indirectly in any commission paid thereunder or therefor, covering himself or any person specified in Section 760.

(Amended by Stats. 1937, Ch. 652.)

1677. Failure by an applicant to take the examination pursuant to notification by the commissioner of time and place of the examination constitutes a failure to fulfill the examination requirements. Upon such failure by the holder, all privileges under any certificate of convenience shall terminate. In such case, also, the commissioner may require the cancellation of any or all contracts of insurance transacted by or through such applicant under authority of his certificate of convenience.

(Amended by Stats. 1937, Ch. 652.)

1667.1. The commissioner may cancel a certificate of authority of any insurer for failure to comply with an

order to cancel insurance effected pursuant to Section 1677.

(Added by Stats. 1937, Ch. 652.)

1677.5. The commissioner may issue a certificate of convenience to the executor or administrator of the estate of a deceased agent or broker, permitting such party, as such representative, to act as an agent or broker in the conduct of the business of the estate for a period of one year from and after the date of death pending, but not later than, disposal of the business.

(Added by Stats. 1937, Ch. 652.)

1678. The commissioner shall require in advance the following fees:

(a) For filing the application for each annual license of an individual insurance broker, ten dollars ($10).

(b) For filing the application for each annual license of an individual agent or solicitor, four dollars ($4).

(c) For giving to any person the qualifying examination for a license under this article, five dollars ($5).

(d) For filing the application for a license of a nonresident broker, one hundred dollars ($100).

(e) For filing the application for each annual license of a copartnership, association, or domestic corporation as an insurance broker, ten dollars ($10) for each person named therein to exercise the brokership powers.

(f) For filing the application for each annual license of a copartnership, association, or domestic corporation

as an insurance agent, four dollars ($4) for each person named therein to exercise the agency powers.

(g) For filing the first amendment to an application or for filing the first amended application, one dollar ($1).

(h) For filing the application for an endorsement adding to the persons named in a license as entitled to exercise agency powers, four dollars ($4) for each name so added.

(i) For filing the application for an endorsement removing from any license the name of any person theretofore designated as entitled to exercise agency or brokership powers, one dollar ($1).

(j) For filing the application for an endorsement adding to the persons named in a license as entitled to exercise brokerage powers, ten dollars ($10) for each name so added.

(k) For filing the application for a certificate of convenience, the same fee as for filing the application for a license to act in the same capacity.

(l) For filing the application for each annual license of a foreign corporation as an insurance agent, fifty dollars ($50) plus four dollars ($4) for each person named therein to exercise the agency powers.

(m) For filing the application for each annual license of a foreign corporation as an insurance broker, fifty dollars ($50) plus ten dollars ($10) for each person named therein to exercise the brokership powers.

(Amended by Stats. 1939, Ch. 452. In effect June 6, 1939.)

1679. (a) Unless sooner suspended, revoked, or terminated, the license of every insurance agent, broker, or solicitor expires July 1st of each year unless application for renewal is filed as provided in subdivision (b).

(b) Application for renewal of such license may be filed on or before June 3d, upon payment of the renewal fee.

(c) Such license may be renewed upon application filed between June 3d and July 31st upon payment of the renewal fee plus an additional fee equal to the renewal fee.

(d) The commissioner shall mail notice for forfeiture of renewal rights not later than July 20th, to:

(1) The licensee.

(2) The employing agent or broker, if any.

(3) The appointing insurers, if any.

Failure to mail such notice shall not continue the right of renewal.

(e) Such license shall not be renewed after July 31st, but the person may make application for a new license as provided in this code, and shall take and pass the qualifying examination.

(Amended by Stats. 1939, Ch. 452, and Stats. 1939, Ch. 928; amended by Stats. 1941, Ch. 23, and Stats. 1941, Ch. 514. In effect May 30, 1941.)

1679.2. If a holder of a certificate of convenience becomes entitled to a permanent license after the June

30th following issuance of his certificate, a permanent license shall be issued to him upon payment of the fee required for filing application for renewal of such a permanent license. If he fails to pay this fee within 60 days after notice of eligibility for permanent license he forfeits his right to permanent license and all privileges under his certificate of convenience terminate.

(Added by Stats. 1941, Ch. 23. In effect February 4, 1941.)

1679.5. After any hearing involving the suspension, revocation, or denial of a license to act as an insurance agent, broker or solicitor, the commissioner may determine that the licensee shall prove his qualifications before any renewal of his then existing license or future issuance to him of any license to act as an insurance agent, broker or solicitor. Upon such determination, the commission shall, by order, require that the licensee take and pass a qualifying examination before such renewal or such issuance. Such examination may be in lieu of any other action, or, except in the case of revocation, may be in addition to any other action by the commissioner. The examination shall be the same as the qualifying examination provided in this article and shall be given by the commissioner without fee.

(Added by Stats. 1939, Ch. 928.)

1680. Any person who acts, offers to act, or assumes to act, as an insurance agent, broker or solicitor without a valid and subsisting license so to act, is guilty of a misdemeanor.

1731. The commissioner may suspend or revoke any license of an insurance agent, broker, or solicitor, life agent, surplus line broker or motor club agent if, after a hearing upon reasonable notice, he determines that any of the following facts exist in respect to any person authorized to act under such license:

(a) Such person has violated any provision of law relating to conduct of business which could lawfully be done only under authority conferred by such license.

(b) Such person has knowingly or wilfully made a misstatement in an application to the commissioner for a license or in a document filed in support of such an application, or has obtained his license by concealment or knowing misrepresentation.

(c) The purpose of obtaining such license was to evade or prevent the enforcement of any provision of this code or other insurance laws.

(d) Such person has engaged in a fraudulent practice or conducts his business in a dishonest manner.

(e) Such person has shown that he was incompetent or untrustworthy in the conduct of his business or has by commission of a wrongful act or practice in the course of his business exposed the public or those dealing with him to the danger of loss.

(f) Such person has knowingly misrepresented the terms or effect of an insurance policy or contract while acting in the course of his business.

(g) Such person has failed to perform a duty expressly enjoined upon him by a provision of this code, or has committed an act expressly forbidden by such a provision.

(h) Such person has committed a public offense, shown by a final judgment of conviction, having as one of its necessary elements a fraudulent act or an act of dishonesty in acceptance, custody, or payment of money or property. Upon any conviction of such offense, the commissioner may suspend the license of the person so convicted until the judgment is made final or other final judgment issues.

(i) Such person has aided or abetted any person in an act or omission which would constitute grounds for suspension, revocation, or refusal of license to the person aided or abetted.

(j) Such person has permitted any person in his employ to violate any provision of this code.

(Added by Stats. 1937, Ch. 652; amended by Stats. 1941, Ch. 23. In effect February 4, 1941.)

1732. In addition to any other matters required to be shown to him in order to obtain a license to act as an insurance agent, broker, solicitor, or life agent, surplus line broker or motor club agent, the commissioner may refuse to grant any such license unless the applicant makes a showing satisfactory to him that none of the facts specified in Section 1731 exist in respect to the applicant or its members.

(Added by Stats. 1937, Ch. 652.)

1760. Any citizen of this State may negotiate and effect insurance on his own property with any nonadmitted insurer.

1760.5. The provisions of this chapter limiting the insurance which may be placed with nonadmitted insurers and requiring any report thereof shall not apply to:

(a) Reinsurance of the liability of an admitted insurer.

(b) Insurance against perils of navigation, transit or transportation upon hulls, freights or disbursements, or other ship-owner interests; upon goods, wares, merchandise and all other personal property and interests therein, in course of exportation from or importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination and including war risks; and marine builder's risks, dry docks and marine railways, including insurance of ship repairer's liability and protection and indemnity insurance, but excluding insurance covering bridges or tunnels.

(c) Aircraft insurance.

(d) Insurance on property or operations of railroads engaged in interstate commerce.

The insurances specified in the foregoing paragraphs (b), (c), and (d), may be placed with a nonadmitted insurer only by and through a special lines' surplus line broker. The license of a special lines' surplus line broker shall be applied for and procured and shall be subject to the same fees for filing on issuance in the same man-

ner as the license of a surplus line broker, except that in lieu of the bond required by subdivision (b) of Section 1765, there shall be delivered to the commissioner a bond in the form, amounts, and conditions specified in Section 1644 of this code and only one fee shall be collected from one person for both licenses. Such license in respect to such business shall be subject to all the provisions of this chapter except Sections 1761, 1763 and 1775.5.

The commissioner may, in respect to business written or placed under the provisions of this section, require such information and reports thereof as he considers necessary, convenient or advisable for tax or statistical purposes.

Each placing of insurance in violation of this chapter is a misdemeanor.

The commissioner may revoke, suspend or deny any license or certificate of authority granted pursuant to this code whenever he finds, after reasonable notice and hearing, that the licensee or holder of the certificate has committed a violation of this section.

The premium for insurance placed by or through a special lines surplus line broker pursuant to this section shall not be subject to the tax imposed upon such broker based upon gross premiums paid for insurance placed under authority conferred by his license.

(Added by Stats. 1937, Ch. 729.)

1761. Except as provided in Sections 1760 and 1760.5, a person within this State shall not transact any insurance on property located or operations conducted within,

or on the lives or persons of residents of this State with nonadmitted insurers, except by and through a surplus line broker licensed under this chapter and upon the terms and conditions prescribed in this chapter.

(Amended by Stats. 1937, Ch. 729.)

1762. (Repealed by Stats. 1937, Ch. 729.)

1763. A surplus line broker may solicit and place insurance, other than as excepted in Section 1761, with nonadmitted insurers only if such insurance can not be procured from a majority of the insurers admitted for the particular class or classes of insurance. Such part of the insurance as can not be so procured may be procured from nonadmitted insurers, if the insurance is not placed in a nonadmitted insurer for the purpose of procuring a rate lower than the lowest rate which will be accepted by any admitted insurer. It shall be conclusively presumed that insurance is placed in violation of this paragraph where the insurance is actually placed with a nonadmitted insurer at a lower rate of premium or lower premium than the lowest rate of premium or the lowest premium which could be obtained from an admitted insurer unless, at the time such insurance attaches, there is filed with the commissioner a statement describing the insurance, specifying the rate and the nearest procurable rates from admitted insurers. Unless the commissioner within five days after such filing notifies the filing broker that in his opinion the placing of the insurance constitutes a violation of this section, the broker may thereafter maintain in effect such insurance. If within such five-day period the commissioner notifies the surplus line broker that such insurance is in viola-

tion of this section and orders the broker to effect termination of such insurance within 10 days from such notice, and the broker fails or refuses to effect such termination, such failure or refusal is a violation of this section. Statements filed under this section shall not be subject to public inspection unless the commissioner determines that the public interest or the welfare of the filing broker requires that any statement be made so subject. The commissioner may make and publish reasonable rules and regulations, consistent with this chapter, in respect to transactions governed thereby and the basis or bases for his determinations hereunder.

(Amended by Stats. 1937, Ch. 729.)

1764. (Repealed by Stats. 1937, Ch. 729.)

1765. Upon application in such form as the commissioner prescribes, the commissioner shall issue a license authorizing any applicant that is trustworthy and competent to transact an insurance brokerage business in such manner as to safeguard the interest of the insured, to act as a surplus line broker from the date of such license until the first day of July succeeding, on the delivery to the commissioner of a bond to the State of California in the sum of five thousand dollars ($5,000) with an admitted surety insurer conditioned that said licensee will fully and faithfully comply with the requirements of this chapter.

The commissioner shall charge and collect in advance a fee of fifty dollars ($50) for filing each application for license to act as a surplus line broker.

(Amended by Stats. 1939, Ch. 452. In effect June 6, 1939.)

1766. If in the opinion of the commissioner the solvency of any surety on a bond required in this chapter has become impaired or doubtful, he shall notify the broker, and unless within 10 days after receipt of such notice the solvency of such surety is proved to the satisfaction of the commissioner, or a new bond is substituted therefor, the commissioner shall revoke the license of the broker.

1767. A surplus line broker shall maintain in good faith an office in this State.

1768. Such broker shall keep in said office complete books of the business transacted by him, with nonadmitted insurers under his license as a surplus line broker, showing:

(a) The effective dates of such insurance.

(b) The names of the insurers and of the insured.

(c) The gross premium payable therefor.

(d) The terms and character of insurance and location of the subject matter.

(e) Statements in the same detail as in the case of insurance in effect, of all such insurance canceled or on which premiums have been increased or reduced, and the amounts of additional or of return premiums thereon.

1769. Whenever required so to do by the commissioner, such surplus line broker shall furnish to the commissioner a list of the majority of the admitted insurers from which the entire amount of insurance desired was not obtainable.

1770. The commissioner, whenever he deems necessary, may examine the books and accounts of any surplus line broker for the purpose of determining whether or not the broker is conducting his business in accordance with the provisions of this chapter. For the purpose of making such examination such broker shall allow the commissioner free access at all times to all the broker's books and papers, and the commissioner shall thoroughly inspect and examine all of the broker's affairs.

1771. All examinations by the commissioner shall be at the expense of the surplus line broker, such expenses to be paid in advance. If any such broker refuses to pay such expenses in advance, the commissioner may refuse to issue a renewal of the license of such broker and shall revoke the license of the broker.

1772. (Repealed by Stats. 1937, Ch. 729.)

1773. (Repealed by Stats. 1937, Ch. 729.)

1774. On or before the first day of March of each year the surplus line broker shall file with the commissioner a sworn statement of all business transacted under his license during the last preceding calendar year. Such statement shall contain accounts of:

(a) The gross amount of insurance procured from and placed with nonadmitted insurers during the calendar year.

(b) The gross premium charged therefor, including additional insurance premium.

(c) The gross amount of all insurance canceled during said year.

(d) The gross return premiums thereof.

(e) Any additional premiums charged and the gross premiums returned during that calendar year on insurance previously effected.

1775. All such reports and statements shall be made on blanks furnished to the surplus line broker by the commissioner on application therefor.

1775.5. Every surplus line broker shall annually, on or before the first day of July of each year pay to the Insurance Commissioner for the use of the State of California a tax of 3 per cent of the gross premiums upon business done by him under authority of his license during the preceding calendar year, less 3 per cent of return premiums paid by him by reason of cancellation or reduction of premium, excluding gross premiums paid and return premiums paid by him upon business governed by the provisions of Section 1760.5.

For the purpose of determining such tax, the total premium charged for all such nonadmitted insurance placed in a single transaction with one underwriter or group of underwriters, whether in one or more policies, shall be allocated to this State in such proportion as the total premium on the insured properties or operations in this State, as computed on the exposure in this State on the basis of any single standard rating method in use in all States or countries where such insurance applies, bears to the total premium so computed in all States or countries in which such nonadmitted insurance may apply. This provision shall not apply to interstate motor transit operations conducted between this and other

States. With respect to such operations surplus line tax shall be payable on the entire premium charged on all nonadmitted insurance, less

A. Such portion of the premium as is determined, as herein provided, to have been charged for operations in other States taxing such premium on operations in such States of an insured maintaining its headquarters office in this State;

B. The premium for any operations outside of this State of an insured who maintains a headquarters operating office outside of this State and a branch office in this State.

A penalty of 1 per cent shall be added for each calendar month or fraction thereof after said first day of July during which such tax or any portion thereof remains unpaid, except that the commissioner may remit the penalty in a case where the commissioner finds, as a result of examination or otherwise, that the failure of or delay in payment arose out of excusable mistake or excusable inadvertence.

(Added by Stats. 1937, Ch. 729.)

1776. Any surplus line broker who wilfully fails or refuses to report to the commissioner any insurance on subject matter located within this State placed under his name with nonadmitted insurers, or who, by wilful omission from the records required to be maintained by him for such purpose, attempts to evade the payment of taxes on any such insurance, is, in addition to being required to pay the tax, together with a penalty equal in amount to the tax, guilty of a misdemeanor.

It is a misdemeanor for any surplus line broker or special lines' surplus line broker to accept or pay directly or indirectly any consideration or remuneration for or in connection with the placing of insurance which, if done by a person within this State, is governed by the provisions of this chapter, when such placing was not done by a person licensed therefor pursuant to this chapter.

It is a misdemeanor for any agent or broker to solicit, negotiate or effect any insurance governed by the provisions of this chapter in nonadmitted insurers, except by and through a surplus line broker or special lines' surplus line broker licensed pursuant to this chapter. Except in the case of insurance specified in paragraph (b) of Section 1760.5, it is a misdemeanor for any surplus line broker or special lines' surplus line broker to accept, place, pay, or permit the payment of commission or other remuneration on insurance placed by him under authority of his license to any person other than one holding a license to act as an insurance agent, insurance broker, surplus line broker, or special lines' surplus line broker, except that such business may be accepted by such surplus line broker or special lines' surplus line broker directly from an assured or other person who would likewise be entitled to place the same directly with an admitted insurer without the solicitation, negotiation or effecting thereof by an insurance agent or broker.

The commissioner may deny, suspend or revoke any license issued pursuant to this code if he finds after proper notice and hearing that the licensee has violated any provision of this section.

The permission granted in this chapter to place any insurance in a nonadmitted insurer shall not be deemed or construed to authorize any such insurer to do business in this State.

(Amended by Stats. 1937, Ch. 729.)

1777. The following acts shall constitute a termination of the authority of a surplus line broker, and shall constitute revocation of his license, whether or not the commissioner formally revokes the same:

(a) The removal of the broker's office from this State.

(b) The removal of the accounts of his business from this State.

(c) The closing of his office for a period of more than 20 consecutive days.

(d) Wilful failure or refusal to perform any of the other duties specified in this chapter.

1778. When a surplus line broker's license is revoked for any reason other than the insufficiency of his sureties, a new license shall not be issued to him within one year after such revocation and until all indebtedness of the broker on former business has been paid to the commissioner.

1779. Every insured for whom insurance has been effected with nonadmitted insurers shall, upon request in writing by the commissioner, produce for the commissioner's examination all policies, contracts, and other documents evidencing such insurance, and shall disclose to the commissioner the amount of the gross premiums

paid or agreed to be paid for such insurance. For refusal to obey such request, such insured shall forfeit to the State of California the sum of two hundred dollars ($200) for each refusal.

CHAPTER 9. MUTUAL LIFE AND DISABILITY INSURANCE ON THE STIPULATE PREMIUM PLAN, WITH PROVISION FOR ASSESSMENTS. (Pt. 2, Div. 2.)

10818. On and after January 1, 1940, no new insurer may be organized or admitted to operate under this chapter. Nothing herein contained shall prohibit an insurer theretofore existing under or by virtue of this chapter from transforming to an insurer operating under the provisions of Chapter 9a of this part nor shall anything herein contained prohibit an association now operating under Chapter 8 of this part from transforming to an insurer operating under this chapter at times and in the manner provided in Chapter 8. Any corporation formed pursuant to Section 10815, which, prior to January 1, 1940, exhibits proof satisfactory to the commissioner that it has procured 100 subscribers or applicants who have each paid the required initial premium, and which also deposits with the commissioner on or before January 1, 1940, the sum of one thousand dollars ($1,000) as a payment on its statutory deposit, may be admitted on completion of its organization and statutory deposit on or before July 1, 1940.

(Repealed by Stats. 1935, Ch. 282; added by Stats. 1939, Ch. 327.)

10830.5. An insurer transacting insurance under this chapter shall not assume liabilities for life insurance on the life of any one person in excess of three thou-

sand dollars ($3,000) or 10 per cent of the surplus of the insurer arising from its life insurance business, whichever is greater, without at once reinsuring the excess in an admitted insurer.

"Surplus," as used in this section, means the amount, as shown by the last annual statement of the insurer on file with the commissioner, by which the assets of the life insurance department of such insurer exceed the liabilities of such department for losses reported, expenses, taxes, all other indebtedness and the amount of reserves required by this chapter.

(Added by Stats. 1941, Ch. 617.)

10830.6. An insurer transacting insurance under this chapter shall not assume liabilities for disability insurance on the life or health of any one person in excess of three thousand dollars ($3,000) or 10 per cent of the surplus of the insurer arising from its disability insurance business, whichever is greater, without at once reinsuring the excess in an admitted insurer.

"Surplus," as used in this section, means the amount, as shown by the last annual statement of the insurer on file with the commissioner, by which the assets of the disability insurance department of such insurer exceed the liabilities of such department for losses reported, expenses, taxes, all other indebtedness and the amount of reserves required by this chapter or by the commissioner.

(Added by Stats. 1941, Ch. 617.)

10831.5. An insurer subject to this chapter shall not pay or agree to pay to any person a salary exceeding

the sum of three thousand six hundred dollars ($3,600) annually, unless such action is authorized by the affirmative votes of more than half the number of persons elected to and serving on its board of directors. The minutes of the meeting of the board of directors at which such an act is authorized shall state the duties to be performed for such salary and name the person who is to be so employed.

A certified copy of the minutes of the meeting at which any such salary is approved shall be filed with the commissioner within 10 days after the meeting.

(Added by Stats. 1941, Ch. 617.)

10870. Every insurer subject to the provisions of this chapter shall hold and maintain, upon every contract of life insurance issued on and after the date upon which it becomes subject to the provisions of this chapter, and prior to January 1, 1942, assets in excess of other liabilities, to provide for reserves not less than the minimum tabular reserves prescribed in subdivision (a). The statutory deposit required by law may be considered as a part of such reserves or of other required policy reserves.

(a) The basis for minimum reserves shall be the American Experience Table of Mortality, with Farr's Table No. 3 or Craig's Extension for ages under 10, and interest at 4 per centum per annum; provided, however, that contracts issued on a weekly premium basis and providing therein for valuation according to the Standard Industrial Table of Mortality and interest at 4 per centum per annum shall be valued according to

such industrial table of mortality and rate of interest. Such contracts may provide for not more than one year preliminary term insurance by incorporating therein a clause plainly showing that the first year's insurance under such contracts is term insurance, purchased by the whole or a part of the premiums to be received during the first contract year, and such contracts may be valued on the basis of the mortality table and interest rate above prescribed by the preliminary term plan; provided, however, that the reserve according to such standard for the first to the fifth policy years, inclusive, may be reduced by the following percentages: First year, 80 per cent; second year, 80 per cent; third year, 60 per cent; fourth year, 40 per cent; fifth year, 20 per cent; and provided further, that at no time shall the reserve be less than the value of any nonforfeiture provision contained in the policy.

(b) Every insurer subject to this chapter shall hold and maintain upon every contract of life insurance issued after December 31, 1941, assets in excess of other liabilities, to provide for reserves not less than minimum tabular reserves prescribed in this subdivision. The basis for computing the reserves required by this subdivision shall be the American Experience Table of Mortality with Farr's Table No. 3 or Craig's Extension for ages under 10, with interest at a rate of not more than 3½ nor less than 2½ per cent per annum. At the option of the insurer, its reserves may be computed by the modified preliminary term method described in subdivision (c).

(c) Life insurance policies may provide for not more than one year of preliminary term insurance by incor-

porating in the provision thereof specifying the premium consideration to be received by the insurer, a clause plainly showing that the first year's insurance under such policies is term insurance, purchased by the whole or a part of the premium to be received during the first policy year. Such policies may, in accordance with their terms be valued on the basis of the mortality tables and interest rates prescribed in subdivision (b) by the modified preliminary term plan described in subdivision (d).

(d) If the actuarial net preliminary term renewal premium in the case of

(1) Insurance under a limited-payment life preliminary term policy providing for the payment of all premiums thereon within less than 20 years from the date thereof; or

(2) Endowment insurance under an endowment preliminary term policy,

exceeds the actuarial net preliminary term renewal premium, calculated on the same table of mortality and rate of interest, for a 20-payment life policy, the reserve on such policy specified under (1) or (2) of this subdivision (d), as the case may be, at the end of any year, including the first, shall not be less than the sum of the reserve on a 20-payment life preliminary term policy issued at the same time on a life of the same age and the actuarial net level premium reserve for a pure endowment maturing at the end of the premium payment period, equal to the excess of the full net level premium reserve, at the end of such premium payment pe-

riod, on such policy specified under (1) or (2) of this subdivision (d), as the case may be, over the reserve, at the end of such premium payment period, of such 20-payment life preliminary term policy.

The premium payment period herein referred to is 20 years or the period, if less, during which premiums are actually payable under such policy specified in (1) or (2) of this subdivision (d), as the case may be.

(e) As used in subdivision (d), the term "20-payment life preliminary term policy" means a life insurance policy embodying all of the following attributes:

(1) It is whole-life insurance;

(2) The premium charged is payable annually or at lesser intervals until 20 annual premiums or a proportionately greater number of premiums payable at intervals less than one year shall have been paid, or until the prior death of the insured;

(3) The first year's insurance is term insurance purchased by the whole or part of the premium to be received during the first contract year.

In computing reserves as required by this section, no allowance or reduction may be made in consideration of the fact that members may be assessed to make up a deficiency. The statutory deposit required by law may be considered as a part of such reserves or of other required policy reserves.

This section exclusively fixes the life insurance reserve requirements for insurers subject to this chapter.

(Added by Stats. 1935, Ch. 282; amended by Stats. 1941, Ch. 617.)

pp. 10, 12

SUPREME COURT OF THE UNITED STATES.

No. 274.—October Term, 1945.

F. O. Robertson, Appellant, vs. The People of the State of California. } Appeal from the Superior Court of Ventura County, State of California.

[June 3, 1946.]

Mr. Justice Rutledge delivered the opinion of the Court.

This case differs from *Prudential Insurance Co.* v. *Benjamin*, No. 707, decided this day, in three respects. It is a criminal cause; the statutes involved regulate, rather than simply tax, the business of insurance; and appellant's acts held to violate them were done before the McCarran Act's[1] effective date.

Appellant was convicted in a state court for violating §§ 703(a) and 1642 of the California Insurance Code and the conviction was sustained on appeal to the Superior Court of Ventura County.[2] Appellant now urges here primarily that the application which has been made of those sections is a regulation of interstate commerce forbidden by the commerce clause of the Constitution, Article I, § 8, in view of *United States* v. *South-Eastern Underwriters Ass'n*, 322 U. S. 533. He also puts forward due process and equal protection arguments, resting on his conception of the applicability of those provisions of the Fourteenth Amendment.[3]

The California Insurance Code provisions are as follows:

> "703. Except when performed by a surplus line broker, the following acts are misdemeanors when done in this State:
> "(a) Acting as agent for a nonadmitted insurer in the transaction of insurance business in this State."

[1] Public Law 15, 79th Cong., 1st Sess., c. 20, approved March 9, 1945; 15 U. S. C. §§ 1101-1115. See text *infra*, following note 32.

[2] The conviction was obtained in the Justice's Court of Ventura Township, California. The Superior Court of Ventura County was the highest court of the state to which appeal could be taken. Its opinion is not reported. The penalty was a fine of $100 imposed for violating each count.

[3] In the Statement of Appeal filed in the Superior Court the grounds relied upon, apart from commerce clause and local law objections, were only that appellant's acts "were, if true, done by him in accordance with the provisions of the Fourteenth Amendment to the Constitution of the United States . . ." and that §§ 703(a) and 1642 "are unconstitutional and in violation of . . . the Fourteenth Amendment. . . ."

"1642. A person shall not act as an insurance agent, broker or solicitor until a license is obtained from the Commissioner, authorizing such person so to act."[4]

The complaint charged in two counts that appellant had (1) acted without a license as an agent for a nonadmitted insurer in soliciting and selling a policy contrary to § 703(a), and (2) solicited and sold a policy of insurance without being licensed as required by § 1642.

The evidence, which is undisputed, disclosed the following facts: The First National Benefit Society is an Arizona corporation, conducting from Phoenix a mutual benefit type of insurance business. Its method of operation must be inferred from the facts of record, in the absence of other evidence. One O'Lein, then an elderly resident of Ventura, California, had difficulty in securing insurance on account of his age. Prior to August 28, 1944, he had learned of the Society's "Gold Seal" policy, by radio and through "literature." This apparently was mailed from the home office and included a printed form of return postal card marked, presumably pursuant to postal permit, "Postage will be Paid by Addressee," the Society. O'Lein filled in and returned the card to the Society in Phoenix, asking it to "send me, without obligation, details of 'GOLD SEAL' POLICIES." A few days later, on August 28, 1944, appellant called at O'Lein's home with the card, stating he represented the First National Benefit Society. Thereupon he explained to O'Lein the terms of the policy, its benefits, and costs, soliciting and persuading the prospect to take out a policy for himself and one also for his wife. No medical examination was required. Appellant filled in the application forms, procured the signatures, accepted from O'Lein a check made out in appellant's name in payment of the first quarterly premiums, gave receipts, later cashed the check at a local bank, and received the proceeds. A few days later the O'Leins received policies by mail from the Society's office in Phoenix.

---

[4] Deering's California Codes, Insurance Code of California, §§ 703, 1642. These sections are part of California's comprehensive regulatory scheme for the business of insurance; and are directly related, in the case of § 703, to the requirements laid by other sections for acting as surplus line broker, see text *infra*; and in that of § 1642 to such requirements for securing a license to act in the specified representative capacities, see text *infra*.

The evidence further showed that the Society was not admitted o do business in California and that appellant had no license f any kind to act as an insurance agent, broker or solicitor there. We may deal first exclusively with the objections founded on he commerce clause, since each of the others would be obviously ithout merit but for the supposed effects of the *South-Eastern* ecision[5] not only in relation to the prohibitory consequences of at clause but also, apparently, to resurrect other limitations pon state power long since settled adversely to such claims in eference to the business of insurance.[6]

I.

Little need be said in relation to the general license require- ent of § 1642, except to state more fully its effects by virtue f its relation to other provisions of the California Insurance ode, which prescribe the conditions for securing the license. hose requirements, in summary, are that an application must e made upon a prescribed form setting forth the kinds of insur- nce the applicant desires to transact (§ 1643); he must be a itizen of the United States or one who has applied for citizen- hip; and must have attained his majority (§ 1648.5); he must ass a written examination as to his qualifications (§ 1674) and ay two fees, one a filing fee of $4, the other an examination fee of 5 (§ 1678). On his fulfilling these conditions the license is issued f the state commissioner of insurance is satisfied that he is quali- ed and intends in good faith to carry on the business (§ 1649). Section 1639 declares that the purpose of these and other pro- isions of the Code is "to protect the public by requiring and aintaining professional standards on the part of all insurance

[5] But see 322 U. S. 533, 547 ff.

[6] Thus, it was long settled, under the doctrine of Paul *v.* Virginia, 8 Wall. 8, that neither due process nor equal protection of the laws forbids the nd of state regulation of the business of insurance imposed by §§ 703(a) d 1642. Hooper *v.* California, 155 U. S. 648; Nutting *v.* Massachusetts, 3 U. S. 553. See also Hoopeston Co. *v.* Cullen, 318 U. S. 313, and text fra at note 32.

As to the dangers of blurring the due process and equal protection limita- ns with commerce clause ideas, and the consequent necessity for separate eatment in disposing of these problems, see Ribble, State and National wer over Commerce (1937) 98; Nippert *v.* Richmond, 66 S. Ct. 586, 589- 0; McLeod *v.* Dilworth, 322 U. S. 327, dissenting opinion at 357. Cf. also thlehem Motors Corp. *v.* Flynt, 256 U. S. 421; Henderson, The Position of reign Corporations in American Constitutional Law (1918) 122; and see IX.

agents acting as such within this State." The statutory requirements apply to all agents, without discrimination, whether they represent California or out-of-state insurance companies and whether the business done is interstate or local in character. They apply only to agents acting in California, not to acts done outside the state.

Appellant has not sought to obtain a license under the Code provisions, has not been denied one, and has not attacked any particular requirement. His charge is wholesale, not particular. It is, in effect, that since the entire series of acts done by him was directed to the conclusion of an interstate transaction, within the *South-Eastern* ruling, those acts though taking place altogether within California were inseparably a part of the interstate transaction and therefore beyond reach of the state's licensing or regulatory power. The contention appears to contemplate not only that appellant's acts were interstate commerce, but also that the state cannot impose any licensing requirement upon them or, it would seem, upon any phase of conducting an interstate insurance business through agents acting in person.

To state the argument in this way is in effect to answer it. We accept the regulation for what it purports to be on its face and by the statute's express declaration, namely, a series of regulations designed and reasonably adapted to protect the public from fraud, misrepresentation, incompetence and sharp practice which falls short of minimum standards of decency in the selling of insurance by personal solicitation and salesmanship. That such dangers may exist, may even be widely prevalent in the absence of such controls, is a matter of common knowledge and experience. And no argument is needed to show that these evils are most apt to arise in connection with the activities of the less reliable and responsible insurers, as well as insurance brokers or salesmen, and vitally affect the public interest.[7]

Such being the purpose and effect of § 1642, there can be no substantial question concerning its validity on commerce clause grounds. That is true whether appellant's acts are taken in their setting, as being "in" commerce or only as "affecting"

[7] See Hartford Accident & Indemnity Co. *v.* Nelson, 291 U. S. 352, 360; German Alliance Ins. Co. *v.* Lewis, 233 U. S. 381, 412-415; Osborn *v.* Ozlin, 310 U. S. 53, 65, 66; National Union Fire Ins. Co. *v.* Wanberg, 260 U. S. 251, 257. And see also United States *v.* South-Eastern Underwriters Ass'n, 322 U. S. 533, 539 ff.; Prudential Life Ins. Co. *v.* Benjamin, No. 707, decided this day.

it. For the case is ruled, so far as § 1642 is concerned, by decisions such as *California* v. *Thompson*, 313 U. S. 110; *Hartford Indemnity Co.* v. *Illinois*, 298 U. S. 155; *Smith* v. *Alabama*, 124 U. S. 465; *Nashville, C. & St. L. Ry. Co.* v. *Alabama*, 128 U. S. 96; and *Union Brokerage Co.* v. *Jensen*, 322 U. S. 202.[8]

If, in the absence of contrary action by Congress, a state may license agents or brokers for the sale of interstate transportation in order to prevent fraud, *California* v. *Thompson*, *supra*; trainmen engaged in interstate commerce to secure their competence, *Smith* v. *Alabama*, *supra*; *Nashville, C. & St. L. Ry. Co.* v. *Alabama*, *supra*; the sale on commission of interstate consignments of farm produce to secure honest dealing and financial responsibility, *Hartford Indemnity Co.* v. *Illinois*, *supra*; and the activities of customs brokers to secure responsibility in the state courts on claims arising locally, *Union Brokerage Co.* v. *Jensen*, *supra*, by the sorts of conditions imposed through the respective licensing provisions, there can be no valid reason for outlawing § 1642 here.

That appellant's activities were of a kind which vitally affect the welfare and security of the local community, the state and their residents could not be denied. Cf. *Hoopeston Co.* v. *Cullen*, 318 U. S. 313, 316 ff. They had in fact a highly "special interest" in his localized pursuit of this phase of the comprehensive process of conducting an interstate insurance business. Cf. *Union Brokerage Co.* v. *Jensen*, *supra*, at 212. Here, as in each of the instances cited, appellant's activities called in question were concentrated in the regulating state, although affecting or constituting interstate commerce. Moreover the licensing provision of § 1642 is regulatory, not exclusory in character; is not discriminatory; is not in conflict with any policy or action of Congress but rather accords with its expressed views in so far as the McCarran Act may be taken to be applicable;[9] and is designed appropriately to secure the public from those evils of uncontrolled insurance solicitation to which it is directed. In view of these facts the regulation "neither discriminates against nor substan-

[8] In some of these cases, e. g., Hartford Indemnity Co. v. Illinois, 298 U. S. 155, and Union Brokerage Co. v. Jensen, 322 U. S. 202, there were also federal licensing statutes which the Court found neither inconsistent with nor, therefore, effective to exclude the state licensing regulation. The Union Brokerage case involved an instance of state regulation of foreign commerce. In addition to the cited authorities, see also the decisions cited and relied upon in each of the opinions.

[9] See text *infra* following note 32.

tially obstructs the commerce." *California* v. *Thompson*, *supra*, at 114.

Furthermore, here as in the cited cases, "unless some measure of local control is permissible," the activities and their attendant evils "must go largely unregulated," unless or until Congress undertakes that function. *California* v. *Thompson*, *supra*, at 115. And in view of the well-known conditions of competition in this field, such a result not only would free out-of-state insurance companies and their representatives of the regulation's effect, thus giving them advantage over local competitors, but by so doing would tend to break down the system of regulation in its purely local operation.

II.

Section 703(a) is interwoven with different conditions and therefore has somewhat different effects than does § 1642. Unlike the latter, which applies to acting as agent for all insurers, it forbids acting as agent for nonadmitted insurers alone, unless the person so acting is a "surplus line broker."[10] To become a surplus line broker one must procure a special license pursuant to the requirements of § 1765. This license also is issued upon application, if the commissioner of insurance finds that the applicant is "trustworthy and competent to transact an insurance brokerage business in such a manner as to safeguard the interest of the insured." The applicant also must file with the commissioner a faithful performance bond in the amount of $500 and pay a filing fee of $50.

So far as concerns these requirements of § 1765 for procuring the surplus line broker's license, if they are considered without reference to any of the other Code provisions, the same conclusion is required concerning the validity of § 703(a) as for that of § 1642, by the authorities above cited and discussed. Indeed the filing fee of $50 is larger than the combined fees required by § 1642, but not more than the fee involved in the *Union Brokerage* case, *supra*. And the bond provision is substantially identical with that sustained in *California* v. *Thompson*, *supra*. In the absence of any showing that it is administered arbitrarily,

[10] See note 14, as to "surplus line insurance." In general this is insurance involving special risks or for some other reason not falling within the usual lines of authorized business.

the requirement that the license shall issue only after a finding of trustworthiness and competence by the commissioner cannot be taken to be other than an appropriate means of safeguarding the public against the obvious evils arising from the lack of those qualifications. *California* v. *Thompson, supra.* Considered separately from any relationship to other sections of the Code, therefore, the prescribed conditions for securing the surplus line broker's license are no more invalid than those which must be fulfilled to secure the general agent's license under § 1642.[11]

This the state contends is all that needs to be considered, since appellant neither possessed nor, so far as appears, had applied for or been denied a surplus line broker's license. Consequently, in its view, the validity of other provisions of the Code is not involved, either directly or by necessary relationship to § 703(a).[12]

III.

Appellant insists, however, that § 703(a) taken in conjunction with § 1765, is more than a licensing requirement for regulating the qualifications of agents acting in California in the transaction of the business covered by its terms. It is rather, he maintains, a prohibition of the writing of such insurance there by nonadmitted insurers and their agents. And this, he says, the state cannot do, both because it cannot exclude interstate commerce

[11] Appellant also points out that by § 1775.5 an annual tax equal to three per cent of the gross premiums upon business done during each calendar year is imposed upon each surplus line broker. Apart from the facts that appellant has not applied for such a license and that no effort has been made to collect this tax from appellant, so far as appears, it may be noted that the tax applies alike to all surplus line brokers, whether acting for domestic or admitted foreign insurers or for nonadmitted ones. No question as to the validity of this tax is presented by this record.

[12] Indeed the state argues that no question is raised concerning the validity of the requirements of § 1765 for procuring the surplus line broker's license since, "so far as this record shows, the life insurance sought to be effected in this case might or might not have been procurable from admitted insurers."

However, on the alternative basis of accepting appellant's view that the insurance would not have been so obtainable, California concedes the insurance would fall within the surplus line exception, but asserts that appellant, if he had obtained the license, could have acted as agent in the transaction. Hence, since he did not apply for the license, the state argues that § 1765 has not been applied to him and its validity is not involved.

Appellant, however, maintains that even if he had secured the license, the combined effects of § 703(a) and other sections relating to surplus line insurance would have forbidden him to act in this transaction. See text *infra* Part III. California maintains that the validity of other Code sections, apart from §§ 703(a) and 1642, was not in issue in the state courts and, though raised here in the briefs, is not necessarily involved.

in California and because it cannot discriminate against out-of-state insurers in such a manner.

These conclusions are based on the view that § 703(a) is related inseparably by its terms and in fact to other Code provisions in addition to § 1765, namely, those regulating the admission of foreign insurance corporations to do business in California[13] and the interwoven provisions regulating activities of surplus line brokers.[14] Section 703(a) on its face forbids acting as agent for nonadmitted insurers, except in the case of a surplus line broker. And the combined effects of the provisions relating to such brokers and of those governing the admission of foreign corporations are said to be to "absolutely prohibit" the writing of or aiding in procuring the type of insurance issued here or indeed of any insurance issued by the Society.[15]

---

[13] See California Insurance Code §§ 1560-1607, 10818. Appellant relies particularly upon § 10818, prohibiting the organization or admission of new insurers after January 1, 1940, to operate as so-called "Chapter 9" companies, that is, among others, as mutual companies having less than the reserve requirements specified for such insurers operating on the assessment plan, but permitting previously organized or admitted companies to continue under specially imposed requirements. See text *infra* at notes 16, 21.

Pertinent also is § 700 of the Code providing: "A person shall not transact any class of insurance business in this State without first being admitted for such class," through securing a certificate of authority from the commissioner on compliance with the code's requirements.

[14] California Insurance Code, Chapter Six. Surplus Line Brokers. §§ 1760-1779.

Section 1761 reads: "Except as provided in Sections 1760 and 1760.5, a person within this State shall not transact any insurance on property located within, or on the lives or persons of residents of this State, with nonadmitted insurers, except by and through a surplus line broker licensed under this chapter and upon the terms and conditions prescribed in this chapter."

Section 1760 provides: "Any citizen of this State may negotiate and effect insurance on his own property with any nonadmitted insurer," cf. note 20, and § 1760.5 requires specified kinds of insurance, e. g., marine and aircraft risks, to be placed with nonadmitted insurers only through a "'special lines' surplus line broker."

By § 1763 a surplus line broker "may solicit and place insurance, other than as excepted in section 1761, with nonadmitted insurers only if such insurance can not be procured from a majority of the insurers admitted for the particular class or classes of insurance. Such part of the insurance as can not be so procured may be procured from nonadmitted insurers," if it is not so placed to secure a lower rate than the lowest any admitted insurer will accept. Stringent provisions for supervising the section's requirements by the commissioner are included.

Other sections require maintaining an office in the state (§ 1767), keeping records and making reports (§§ 1768, 1769, 1774), and provide criminal sanctions for violating the chapter's provisions, § 1776.

See as to surplus line brokers, Patterson, The Insurance Commissioner in the United States (1927) 188-190.

[15] The argument is not only various but somewhat devious. Appellant disclaims intention to maintain that the state cannot "regulate the insurance business" and goes on to rest on the general proposition that it cannot

California in effect concedes this, alternatively to maintaining that no question concerning the validity of those provisions is presented. The short effect of the admission provisions, for purposes now pertinent, the state admits, is to forbid either foreign or domestic companies to do a life insurance business in California other than on a legal reserve basis,[16] except as to companies engaged in doing such business there prior to January 1, 1940.[17] The policy underlying this exclusion is said to be founded in the state's experience showing that a mutual company doing business "on the stipulated premium plan with right of assessment,[18] without a sufficient surplus and full reserves is not adequately safeguarded to insure that money will be available to pay death benefits." In support of this statement of California's policy and the experience on which it is founded, counsel point to the Annual Reports of the Insurance Commissioner covering a period of some six years, from 1934 to 1940,[19] which re-

prohibit interstate commerce entirely and that the effect of the statutory provisions, particularly § 10818, see note 13 *supra*, is to do this. As will appear, the argument really comes down to maintaining that California cannot require foreign companies or their agents to comply with her minimum requirements for issuing the type of insurance issued here.

[16] By § 10510 of the Code, "An incorporated life insurer issuing policies on the reserve basis shall not transact life insurance in this State unless it has a paid-in capital of at least two hundred thousand dollars ($200,000)." Section 36 defines "paid-in capital" as including the surplus of a mutual insurer. The effect of the two sections, it is conceded in the state's brief, "is to require that a stock company have a capital stock aggregating at least $200,000 and that a mutual company have a surplus of at least $200,000 in order to do business in California." Both requirements apply to domestic and foreign companies alike, with the exceptions noted below in note 17.

[17] The exception was the result of a series of amendments to the Code, made from 1935 to 1939, designed gradually to restrict the operations in the state of companies operating without reserves, to enable such companies already engaged in business to build up reserves, and to forbid the organization or admission of new companies operating without them or with reserves below the minimum requirement. See Calif. Stat. 1935, cc. 282, 283, pp. 1002, 657, 667, 678; Stat. 1937, c. 726, p. 2024; Stat. 1939, c. 321, p. 1609. And see also the Annual Reports of the Insurance Commissioner, State of California, as follows: Sixty-sixth, 10-11; Sixty-eighth, XX; Sixty-ninth, XVII; Seventieth, XVIII; Seventy-first, XXIX; Seventy-third, XVII, XXII XXIII.

[18] The policy issued in this case contained the following provision in small type on the reverse side of the sheet: "The lawfully required portion of Premiums paid on this Certificate shall be set aside into the Mortuary Fund. Premiums necessary to maintain the Certificate in force are not fixed amounts and in event of Premium insufficiency may be adjusted, with the written approval of the Corporation Commission, for the purpose of payment of claims and general operating expenses. In the event of any emergency caused by excessive mortality the Corporation may, with the written consent or at the direction of the Corporation Commission, levy Assessments on Members to be placed in the Mortuary Fund."

[19] See note 17.

sulted in some of the legislation now called in question. See also X Report of Joint Insurance Investigation Committee (N. Y. 364-365 (1906); *Hoopeston Co.* v. *Cullen,* 318 U. S. 313, 321.

Furthermore, the state apparently concedes, as appellant contends, not only that the Society is excluded from transacting insurance business by the admission requirements and its failure to comply with them, but also that appellant would be forbidden to place insurance with it by the provisions relating to surplus line insurance, even if he had secured the surplus line broker's license.[20]

As we understand it, therefore, appellant's argument in this phase comes in substance to two things: (1) That the admission requirements and the surplus line broker provisions, as they relate to nonadmitted insurers and their agents, are invalid for discrimination against out-of-state insurers and in favor of domestic ones; (2) that California, as a result of the *South-Eastern* decision, no longer can require foreign insurance corporations seeking to do business there to maintain minimum reserves for protection of policyholders in the state or compel agents or brokers to refrain from representing them there notwithstanding such noncompliance.

The discrimination argument is without substance in so far as it maintains that the statutes permit domestic companies to operate without meeting these requirements, but forbid out-of-state insurers to do likewise. For, as has been noted,[21] the conditions apply alike to domestic and foreign corporations, excepting only those organized or admitted to do business in California before January 1, 1940. As to them different standards are applicable, but they too apply equally and alike to domestic and foreign insurers.[22]

That the state has seen fit to draw a ~~lone~~ line as of that date between new companies seeking to enter the field and established companies, differentiating the two classes by different standards in the minimum reserve requirements, in order to permit the latter

---

[20] See § 1763, quoted in part in note 14, *supra,* and text *infra* at note 30. The type of insurance issued here is not within the exceptions specified in § 1763, which in turn relate to §§ 1760 and 1760.5. The former, it is to be noted, relates on its face only to property insurance; the latter to various special risks, not including mutual assessment insurance, which can be placed only by a "'special lines' surplus line broker." See note 14.

[21] See note 13.

[22] *Ibid.*

to continue in business and build up reserves,[23] does not involve any discrimination as between domestic and foreign or interstate and intrastate insurers. For each may be authorized to enter, and each to continue, on identical terms. Such a distinction does not become discriminatory, in any sense now pertinent, merely because the preexisting companies are allowed to continue their business under somewhat less burdensome reserve requirements than those under which new companies are permitted to enter. See X Report of Joint Insurance Investigation Committee (N. Y.) p. 365 (1906). Otherwise the state, having authorized either domestic or foreign companies to engage in the business, would be greatly restricted, perhaps foreclosed, in raising the reserve requirements as experience and the public interest might make necessary.[24]

Apart from this classification, which is clearly within the state's power, the discrimination argument becomes identical with the contention that the state cannot exclude foreign companies, such as the First National Benefit Society, or their agents, from carrying on their business in California for failure to meet her reserve requirements.

This is the crucial contention. It too is without merit. The evils flowing from irresponsible insurers and insurance certainly are not less than those arising from the activities of irresponsible, incompetent or dishonest insurance agents. The two things are concomitant, being merely different facades of the same sepulchre for the investments and security of the public. Cf. Study of Legal Reserve Life Insurance Companies, T. N. E. C. Monograph No. 28, Section XV. It would be idle to require licensing of insurance agents, in order to secure honesty and competence, yet to place no restraint upon the kind of insurance to be sold or the kinds of companies allowed to sell it, and then to cover their representatives with their immunity. This could only result in placing domestic and complying foreign insurers at great disadvantage and eventually in nullifying all controls unless or until Congress should take over the regulation.

No such consequence has followed from the *South-Eastern* decision. It did not wipe out the experience of the states in the

---

[23] See the Reports of the Insurance Commissioner, cited in note 16.

[24] Cf. Queenside Hills Realty Co. *v.* Saxl, No. 769, decided April 22, 1946; Chicago & Alton R. Co. *v.* Tranbarger, 238 U. S. 67; Chicago, B. & Q. R. Co. *v.* Nebraska *ex rel.* Omaha, 170 U. S. 57.

regulation of the business of insurance or its effects for the continued validity of that regulation. Much of this was concerned with the activities of so-called foreign insurance companies and in particular, with requirements designed to secure minimum guaranties of solvency and ability to pay claims as they mature. Essentially the protection sought was against fly-by-night operators and the grosser forms of profiteering and financial mismanagement all too common in unregulated insurance activity. See generally Patterson, The Insurance Commissioner in the United States (1927).

It is true that California imposes her reserve standards, for both domestic and foreign insurers, by requiring them to secure a certificate of authority to do business issued upon compliance with those conditions, in other words, by a form of licensing. But we are far beyond the time when, if ever, the word "license" *per se* was a condemnation of state regulation of interstate business done within the state's borders.[25] The commerce involved here is not transportation. Nor is it of a sort which touches the state and its people so lightly that local regulation is inappropriate or interferes unreasonably with the commerce of other states.[26] Not the mere fact of form of licensing, but what the license stands for by way of regulation is important.[27] So also, it is not simply the fact of prohibition, but what is forbidden and for the protection of what interest, that is determinative. For the commerce clause is not a guaranty of the right to import into a state whatever one may please, absent a prohibition by Congress, regardless of the effects of the importation upon the local community. That is true whether what is brought in consists of diseased cattle[28] or fraudulent or unsound insurance.

---

[25] See Union Brokerage Co. v. Jensen, 322 U. S. 202; Clark v. Paul Gray, 306 U. S. 583; Bradley v. Public Utilities Commission, 289 U. S. 92; Hendrick v. Maryland, 235 U. S. 610; Clark v. Poor, 274 U. S. 554; New Mexico *ex rel.* McLean v. Denver & Rio Grande R. Co., 203 U. S. 38.

[26] Cf. Hale v. Bimco Trading Co., 306 U. S. 375; Baldwin v. Seelig, 294 U. S. 511; Hoopeston Co. v. Cullen, 318 U. S. 313.

[27] Cf. authorities cited in note 25.

[28] See, as to state exclusions of and prohibitions on interstate commerce, Rasmussen v. Idaho, 181 U. S. 198; Smith v. St. Louis & S. W. R. Co., 181 U. S. 248; Compagnie Francaise v. State Board of Health, 186 U. S. 380; Reid v. Colorado, 187 U. S. 137; Oregon-Washington R. R. & Navig. Co. v. Washington, 270 U. S. 248; Mintz v. Baldwin, 289 U. S. 346; Crossman v. Lurman, 192 U. S. 189; Plumley v. Massachusetts, 155 U. S. 461; Hennington v. Georgia, 163 U. S. 299. See also Kimmish v. Ball, 129 U. S. 217; M. K. & T. R. Co. v. Haber, 169 U. S. 613; Carter v. Virginia, 321 U. S. 131.

Here California's reserve requirements for securing authority to do business cannot be held, either on the face of the statute or by any showing that has been made, to be excessive for the protection of the local interest affected; or designed or effective either to discriminate against foreign or interstate insurers or to forbid or exclude their activities, by all who are able and willing to maintain reasonable minimum reserve standards for the protection of policyholders. Exclusion there is, but it is exclusion of what the state has the power to keep out, until Congress speaks otherwise. Every consideration which supports the licensing of agents and brokers, and the authorities we have cited giving effect to those considerations,[29] sustain the state's requirements in this respect, as do also the decisions which have sustained various measures of exclusion in protection of the public health, safety and security not only from physical harm but from various forms of fraud and imposition.[30]

It is quite obvious, to repeat only one of those considerations, that if appellant's contentions were accepted and foreign insurers were to be held free to disregard California's reserve requirements and then to clothe their agents or others acting for them with their immunity, not only would the state be made helpless to protect her people against the grossest forms of unregulated or loosely regulated foreign insurance, but the result would be inevitably to break down also the system for control of purely local insurance business. In short, the result would be ultimately to force all of the states to accept the lowest standard for conducting the business permitted by one of them or, perhaps, by foreign countries. Inevitably this would mean that Congress would be forced to intervene and displace the states in regulating the business of insurance. Neither the commerce clause nor the *South-Eastern* decision dictates such a result.

We do not intimate that this particular society's insurance is unsound or fraudulent. As to that no showing has been made. We only say that California has imposed its reserve requirements as allowable standards for securing minimum assurance to the state's policyholders in respect to performance of their policies by the insurer, not as a mere exclusionary measure in exercise of the power to bar foreign corporations altogether; and that in the absence of compliance the state can exclude the company and its

[29] See Part I, text.
[30] See note 28.

representatives as it did, until Congress makes contrary command. Their remedy is not to destroy the regulatory reserve conditions, but to comply with them.

It follows also that appellant's objections founded on the provisions relating to the placing of surplus line insurance with nonadmitted insurers are without merit. Apart from the phase relating to the requirements for obtaining the surplus line broker's license, the objection is two-fold. One is that, even if licensed, appellant would be forbidden to place the insurance with a nonadmitted insurer, unless there were no admitted one with which the risk could be written. The other, that in any event the risk could not be placed with the nonadmitted insurer for a less premium than would be accepted by any admitted insurer. The short answer would seem to be that by the reserve requirements for admission and related prohibitions the state forbids entirely the placing of insurance of the sort issued here whether with domestic, admitted or nonadmitted companies.[31]

It remains to say a word concerning the effect of the McCarran Act for this case and the contentions founded on the Fourteenth Amendment.

As for the latter, with respect to due process, the only objection advanced which is independent of commerce clause considerations, is that to sustain the state's requirements, particularly in so far as they exclude the Society from interstate operations in California and thus also appellant's activities in aid of its business, will be in effect to project California's laws into other states, here presumably Arizona, and regulate the Society's activities there. The contention is obviously without merit. Nothing which California requires touches or affects anything the Society or appellant may do or wish to do in Arizona or elsewhere than in California. *Hoopeston Co.* v. *Cullen*, *supra*.

Likewise the equal protection contention is wholly without substance.[32]

Our determination has been made without specific reliance upon the McCarran Act for two reasons. One is that this was not necessary. The other arises from the facts that this is a criminal proceeding, the appellant's acts held to violate the California statutes were committed in August following rendition of the *South-Eastern* decision in June of 1944, and the McCarran Act

31 See note 20 and text.

32 See note 6 and text *infra*.

was not approved until March 9, 1945. The effect of that statute we have considered in the *Prudential* case, decided today. But that case involved no criminal or penal phase and therefore no conceivable *ex post facto* effect. It is doubtful that more than the semblance of such an effect would be involved by reliance upon the Act in this case. For it hardly could be maintained that the *South-Eastern* decision had the effect to convert Congress' preexisting silence concerning a matter which prior to the decision had been held not to be commerce into an expression by Congress of disapproval of these provisions of the California Code during the short period intervening between the decision and the date on which appellant acted. The indicated inference, if any, would be to the contrary, wholly without regard to the McCarran Act. Its effect might reasonably be taken as merely declaring or confirming expressly the inference which would be indicated from Congress' silence entirely without reference to the Act's provisions. But the declaration was made, as we have said, after appellant's acts were done. And to avoid any semblance of retroactive effect in a criminal matter, we have refrained from explicit reliance upon the Act in this case. It does not detract from our decision on other grounds that the McCarran Act, if applied, would dictate the same result.

The judgment is

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

Mr. Justice DOUGLAS dissenting in part.

I agree with the Court that the general license requirements which California provides for the insurance agents were constitutional under the decisions of the Court, even prior to the McCarran Act. But prior to that Act California could not under our decisions under the commerce clause exclude an interstate business, at least in absence of a showing that it was a fraudulent enterprise or in an unsound condition. No such showing is made here. The McCarran Act changes that rule; but it should not be allowed to make unlawful what was lawful when done.